licensed party may bring action for damages against such party on said bond and recover thereon and against the bondsmen in any court of competent jurisdiction without the necessity of making the State a party thereto. On a full hearing the Commissioner may revoke any license for any violation of the provisions of this Act, or any lawful rule of the Commissioner.

Sec. 4. It shall be the duty of every party licensed hereunder to keep and maintain an office, at which office a complete record of the business transacted shall be kept; there shall be kept a substantial book in the form prescribed by the Commissioner of Labor Statistics, in which shall be entered the age, sex, nativity, trade or occupation, name and address of every person or laborer hired or emigrant solicited to be employed beyond the limits of this State and where such person or emigrant was directed to go, and the address of such person or emigrant if known. Such licensed party shall also enter in a register the name and address of every person who shall make application for laborers or emigrants to be employed beyond the limits of this State. All the books and registers, correspondence, memoranda, papers and records of every party licensed hereunder shall be subject to examination at any time by the Commissioner of Labor Statistics, his deputies and inspectors. The fees charged for hiring laborers or soliciting emigrants in this State for employment beyond the limits of this State shall not exceed two dollars ($2.00) for each such person or emigrant; and the fees charged any person who desires to find labor beyond the State or to emigrate beyond the boundaries of the State for the purpose of obtaining employment shall not exceed two dollars ($2.00) for each such person, and in no event shall more than two dollars ($2.00) be collected from any one for the same person who seeks employment beyond the State as a laborer or emigrant. Provided that in all cases where the applicant who seeks employment beyond the State does not obtain such employment through the party licensed hereunder, then such party must return all fees collected from such applicant within thirty days after same has been collected.

Sec. 5. It shall be the duty of the Commissioner of Labor Statistics to enforce this Act, and when any violation thereof comes to his knowledge it shall be his duty to institute criminal proceedings for the enforcement of its penalties before any court of competent jurisdiction. He may make such rules and regulations for the enforcement of this Act, not inconsistent herewith, as to him may seem proper.

Sec. 6. Any person engaging in the business governed and regulated by this Act, except in accordance with the provisions hereof and except he be licensed, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars nor more than three hundred dollars for each such offense, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

Sec. 7. All license fees collected under this Act by the Commissioner of Labor Statistics shall be paid directly into the State Treasury.

Sec. 8. All appropriations heretofore made for the support and maintenance of the Department of the Commissioner of Labor Statistics may be used in the enforcement and administration of this Act.

Sec. 9. There being no adequate laws on the statutes of this State regulating the business of those engaged in hiring laborers or soliciting emigrants in this State to be employed beyond the limits of same, and there being a great abuse and many injustices arising out of such occupation at the present time, creates an emergency and an imperative public necessity which requires that the constitutional rule providing that bills shall be read on three several days in each house be suspended, and said rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

EIGHTH DAY.

Senate Chamber,
Austin, Texas,
Tuesday, Sept. 11, 1917.

The Senate met at 9:30 o'clock a. m., pursuant to adjournment, and was called to order by President Pro Tem. Dean.

The roll was called, a quorum being present,, the following Senators answering to their names:

Alderdice. Bailey.

Bee.	Henderson.
Buchanan of Bell.	Johnson of Hall.
Buchanan of Scurry	Johnston of Harris.
Clark.	Lattimore.
Collins.	McNealus.
Dayton.	Page.
Dean.	Robbins.
Decherd.	Smith.
Floyd.	Strickland.
Hall.	Suiter.
Harley.	Westbrook.

Absent.

Caldwell.	Parr.
Hudspeth.	Woodward.

Absent—Excused.

Gibson.	McCollum.
Hopkins.	

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Alderdice.

Excused.

Senator Hopkins for today on account of important business on motion of Senator Bailey.

Petitions and Memorials.

See appendix.

Committee Report.

See appendix.

Bills and Resolutions.

By Senator Hall:

S. B. No. 15, A bill to be entitled "An Act creating and establishing the Anahuac Independent School District, in Chambers County, Texas, defining its boundaries; providing for a board of trustees to manage and control the public free school within said district, etc., and declaring an emergency."

Read first time and referred to Committee on Educational Affairs.

Morning call concluded.

Senate Bill No. 9.

The Chair laid before the Senate on second reading:

S. B. No. 9, A bill to be entitled "An Act creating an express lien in favor of the State of Texas on all public free school land, University land, and the several asylums land for the use and benefit of the public free school fund, the University fund, and the several asylums fund for the purpose of securing the payment to said funds of all unpaid purchase money and interest thereon due upon all of said lands which have heretofore been sold and which may hereafter be sold so long as any portion of the principal or any portion of the interest thereon remains unpaid; also authorizing the Commissioner of the General Land Office on behalf of the State of Texas to transfer the indebtedness due to said funds and the lien held upon said land for the benefit of said funds to secure the payment of the principal and interest of such person, firm or corporation as may make payment in full to the State for all sums due upon said land, and providing that the person, firm or corporation that may pay said indebtedness shall be subrogated to all the rights, liens and remedies held and enjoyed by the State, and declaring an emergency."

The bill was read and on motion of Senator Bailey the same was laid on the table subject to call.

Senate Bill No. 11.

The Chair laid before the Senate on second reading:

S. B. No. 11, A bill to be entitled "An Act to regulate the business of emigrant agents; defining emigrant agents; providing for licensing any person, firm or private employment agency desiring to be licensed as an emigrant agent, and prescribin the method of obtaining such license, and the requirements thereof, and defining who may be licensed; prescribing certain duties relative to the Act and its administration for the Commissioner of Labor Statistics and the Attorney General, and conferring certain authority relative to the administration of this Act upon said Commissioner; fixing the fees which may be charged by parties licensed hereunder, and fixing the license fees to be paid by those licensed hereunder, creating and defining offenses for violations of this Act and prescribing the punishment

therefor; providing that all fees collected hereunder shall be paid directly into the State Treasury; declaring that all appropriations made for the Department of the Commissioner of Labor Statistics may be used in the enforcement and administration of this Act, and declaring an emergency."

The bill was read and on motion of Senator Hall the same was laid on the table subject to call.

Senate Bill No. 13.

The Chair laid before the Senate on second reading:

S. B. No. 13, A bill to be entitled "An Act to establish and maintain at the Ferguson Farm in Madison County, or the Shaw State Farm in Bowie County, Texas, a school for the education and training of delinquent and incorrigible negro boys, to be named and known as the State Training School for Negro Boys, etc."

The bill was read and on motion of Senator Buchanan of Bell the same was laid on the table subject to call and ordered printed in the Journal.

The bill in full is as follows, to-wit:

By Buchanan of Bell. S. B. No. 13.

A BILL

To be entitled

An Act to establish and maintain at the Ferguson State Farm in Madison County, or the Shaw State Farm in Bowie County, or State Farm in Brazoria County, Texas, a school for the education and training of delinquent and incorrigible negro boys, to be named and known as The State Training School for Negro Boys, the government and management of which shall be vested in the Board of Prison Commissioners of this State; the said Board of Prison Commissioners shall manage and control said institution in accordance with the law, rules and regulations now governing the State Juvenile Training School for Boys, located in Coryell County, Texas, so far as said law, rules and regulations are applicable and practicable. Said Board of Prison Commissioners shall have the same powers in the management of said institutions as are now conferred by law upon the Board of Trustees of the State Juvenile Training School for Boys located in Coryell County, Texas, and all negro boys that are now confined in the State Juvenile Training School for Boys, located in Coryell County, Texas, shall as soon as this law be passed and take effect, be transferred to the Ferguson State Farm in Madison County, or Shaw State Farm in Bowie County, or State Farm in Brazoria County, Texas, or to either of said farms, as to the said Board may seem best, and said transfer be made not later than January 1, 1918, by said Board of Prison Commissioners, and all negro boys under the age of seventeen (17) years who shall hereafter be convicted of felony or other delinquency under the laws of this State, in any court in this State, shall be confined in the institution known as The State Training School for Negro Boys; and that the sum of twenty-five thousand ($25,000) dollars be and is hereby appropriated out of any funds now in the State Treasury, not otherwise appropriated, to be used by said Commissioners in making said transfer and otherwise carrying out the purposes of this Act; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. There shall be established and maintained at the Ferguson State Farm in Madison County, or the Shaw State Farm in Bowie County, or the State Farm in Brazoria County, Texas, as to said Commissioners may seem best, a school for the education and training of delinquent negro boys to be named and known as The State Training School for Negro Boys, the government of which shall be vested in the Board of Prison Commissioners of this State. The said Board of Prison Commissioners shall manage and control said institution in accordance with the law, rules and regulations now governing the State Training School for Boys, located in Coryell County, Texas, so far as said law, rules and regulations are applicable and practicable. Said Board of Prison Commissioners shall have the same powers as are now conferred upon the Board of Trustees of the State Juvenile Training School and the State Training School for Boys, in the manage-

ment of the institution, known as The State Training School for Negro Boys.

Sec. 2. All negro boys that are now confined in the State Training School for Boys, located in Coryell County, Texas, shall, as soon as this law be passed and takes effect, and not later than January 1, 1918, be transferred to the Ferguson State Farm in Madison County, or Shaw State Farm in Bowie County, or the State Farm in Brazoria County, Texas, by the said Board of Prison Commissioners, and the Board of Trustees of the said State Juvenile Training School for Boys, are hereby authorized and are required to deliver to said Board of Prison Commissioners, all negro boys now confined in said institution, in order that they may be transferred to the Ferguson State Farm, or the Shaw State Farm or the Brazoria County State Farm, as to said Board of Commissioners may seem best.

Sec. 3. Hereafter all negro male persons under the age of seventeen (17) years, who shall be convicted of a felony or other delinquency, in any court within this State, unless his sentence be suspended as provided by law, or otherwise disposed of, or unless by reason of the length of the term for which he is sentenced, he is required under the law to be confined in the State Penitentiary, shall be confined in the State Training School for Negro Boys.

Sec. 4. The Board of Prison Commissioners shall set apart for the use of The State Training School for Negro Boys, all necessary grounds, lands, equipments, buildings, etc., now under the supervision of said Board of Prison Commisioners, at the Ferguson State Farm, or Shaw State Farm or the Brazoria County State Farm, which shall be used for the State Training School for Negro Boys.

Sec. 5. All laws and parts of laws in conflict with this Act are hereby expressly repealed.

Sec. 6. That the sum of twenty-five thousand ($25,000) dollars be and is hereby appropriated out of any funds now in the State Treasury, not otherwise appropriated, to be used by said Commissioners in making this transfer and otherwise carrying out the provisions of this Act.

Sec. 7. The crowded condition of the calendar at this time creates an emergency and an imperative necessity that the constitutional rule requiring bills to be read on three several days be suspended, and it is hereby suspended, and this Act shall take effect from and after its passage.

Senate Bill No. 3.

Senator Page called for the reading of the opinion from the Attorney General, requested on yesterday.

Senator McNealus asked for a reading of the Woodward resolution on the same subject, and Simple Resolution No. 15 was read.

The Secretary then read the following:

Attorney General's Department,
Austin, Texas, Sept. 10, 1917.

Hon. W. L. Dean, President Pro Tem.
of the Senate, Capitol.

Dear Sir: I am in receipt of a communication from your Secretary, of the 10th inst., as follows:

"You will please find attached hereto a copy of Senate Bill No. 3 by Hudspeth and McNealus, being a bill entitled, 'An Act to provide for the relief of citizens of Texas suffering by reason of the severe drouth now existing, to make appropriation therefor, prescribing the manner in which it shall be handled and distributed, and declaring an emergency.'

"The Senate, by simple motion, has requested the Attorney General for an opinion as to the constitutionality of this bill. The bill is set for consideration, for Wednesday morning, September 12th, and your early compliance with this request will be appreciated."

Section 1 of the bill referred to proposes to appropriate $2,000,000 of public money, or so much thereof as may be necessary, "for the immediate relief of those suffering from destitution by reason of said drouth."

Section 2 of the Act constitutes the Commissioner of Agriculture, the State Treasurer and the Chairman of the Warehouse and Marketing Department as the "Drouth Relief Committee" and authorizes this committee, wherever it finds destitution on account of the drouth, to draw drafts upon the treasury of the State in favor of the county judge for such sums as within the discretion of the committee will afford adequate relief to the destitute of the county.

By Section 3 of the Act it is made the duty of the Comptroller to issue

warrants for the amount of the drafts drawn by the relief committee, and it is made the duty of the Treasurer of the State to pay these warrants to the county judge who is to pay the same out on order of the commissioners court of said county in favor of those who are under the terms of the bill found in need of aid.

Section 4 of the Act reveals the purpose and nature of the appropriation, and reads as follows:

"After the receipt of said money by the county judge of said county he, in conjunction with the commissioners court of said county, shall immediately, out of said fund, purchase corn, flour, meal and other foodstuffs needful and necessary for sustaining life at such places, and in such manner as to the court may seem proper, and shall distribute the same as a donation to the destitute citizens of said county for the purpose of purchasing foodstuffs, as well as seed for planting their crops for the coming year, as their immediate necessities may demand."

It thus appears that the money is sought to be appropriated from the public treasury "as a donation to destitute citizens," and the question presented is whether or not the Legislature is authorized to make a gift or donation of public money to an individual or individuals under any circumstances, however deplorable or calamitous.

This question in our opinion is answered by the following provisions of the Constitution:

"The Legislature shall have no power to make any grant or authorize the making of any grant of public money to any individual, association of individuals, municipal or other corporations whatsoever." * * * (Section 51, Article 3.)

"No appropriation for private or individual purposes shall be made." * * * (Section 6, Article 16.)

In view of these unambiguous provisions of the Constitution, we believe the Legislature is without power to make a grant or to authorize the making of a grant of public money to any individual or individuals, and that no appropriation for private or individual purposes can be made.

We are therefore compelled to answer that in our opinion the proposed donation of public money is prohibited and the bill, if enacted, would in our judgment be void.

The only direct aid the Legislature can afford to those who suffer from a calamitous visitation of this kind is found in Section 10, Article 8, of the Constitution, where the Legislature is authorized by a vote of two-thirds of each house to release the inhabitants of any particular county, where such calamity exists, from taxes levied for State and county purposes.

The effort of the Legislature to go to the immediate and direct aid of those of our citizens who are suffering from the unprecedented drouth is highly creditable, and it is to be regretted that we find these constitutional barriers in the way of giving aid to those who are now in dire distress, but no more pernicious doctrine could be invented than the suspension or disregard of our constitutional limitations on the ground of necessity, however great the exigency.

Yours truly,
B. F. LOONEY,
Attorney General.

Senator McNealus moved that the opinion, together with Senate Resolution No. 15, be laid on the table until tomorrow and be considered with Senate Bill No. 3, which is set as a special order for Wednesday.

The Senate as Court of Impeachment.

PROCEEDINGS.

Tuesday, September 11, 1917.

Morning Session.

Senate Chamber, Austin, Texas.

(Pursuant to adjournment, the Senate, sitting as a High Court of Impeachment, reconvened at 10 o'clock a. m.)

Hon. W. L. Dean, President Pro Tempore, presiding.

The Board of Managers and their counsel were present.

The Respondent and his counsel were present.

The Chair: The hour having arrived for the convening of the Court of Impeachment, the Sergeant-at-Arms will see that the Chamber is cleared of all except those having permission to remain inside, and

then proclaim the convening of the Court.

Sergeant-at-Arms (at the door of the Senate): Oyez! Oyez! Oyez! The Senate, sitting as a High Court of Impeachment, is now in session.

The Chair: The Chair renews former requests that all members of the Court and officers of the Senate or others connected with the trial, and all visitors shall do their utmost to preserve good order during the progress of the trial. (To counsel): Gentlemen, are you ready to proceed?

Senator Hudspeth: Mr. President.

The Chair: The Senator from El Paso.

Senator Hudspeth: Before we begin, I want to ascertain from the Chair—I am not clear upon his ruling, and I want to ascertain from the Chair whether it is proper to direct the counsel to ask some questions that we would like to have propounded to the witness.

The Chair: The Chair's ruling was that any member of the Court might direct counsel to any line of inquiry, but not suggest—

Senator Hudspeth: Not the exact question, or the direct question that he desired.

The Chair: Yes, not the direct or the exact question.

Senator Hudspeth: Yes, I just wanted to get that definitely.

The Chair: Yes, any Senator can send up a question in writing to any of the counsel on either side, and have it propounded. But a line of inquiry can be suggested by any member of the Court.

Senator Hudspeth: I wanted to understand that ruling; I wanted to direct counsel to a certain line of testimony, if it is permissible.

The Chair: Yes, that has been the ruling of the Chair. (To counsel): All right, gentlemen.

General Crane: It is agreed, Mr. President, that as to the matter that we are talking about now, we will read from the printed record of the first investigation, covering what is known as the "chicken salad" items.

Mr. Manager Bledsoe: What page, General?

General Crane: Beginning on page 38 (reading):

H. B. Terrell, being duly sworn, answered as follows—I am going to change this just a little:

Q. You are the Comptroller of Public Accounts of this State?

A. Yes, sir.

Q. You were such Comptroller and elected when?

A. November, 1914.

Q. Were you Comptroller on October 28, 1915?

A. Yes, sir.

Q. There was a warrant issued from your office on that date, purporting to be signed by you, for the sum of $1796.65, payable to W. A. Achilles; was sent to the Treasurer's office, or carried there, and the Treasurer refused to pay it. Now, will you tell these gentlemen of the committee what that $1796.65 was for?

A. I can only say to the committee—

Q. No, I don't want you to state any hearsay. You saw the statement upon which that warrant was based?

A. Yes, sir.

Q. What was it?

A. It was a contract between the Governor and W. A. Achilles.

Q. What for?

A. Groceries to be furnished and other things.

Mr. Hanger: General, that was never—that is not the—there was no—that was refused by him.

General Crane: I know that was refused, but this is in order to show the contract carried in until the—

Mr. Hanger: I do not think that is embraced in the charge. I thought you wanted to read only the items that were permitted—the deficiency warrants, I think that is all that is admissible here.

General Crane: Well, I wanted to offer—I thought it was embraced in the agreement, of course, if it is not, I wanted to offer the contract and the effort to get the money in.

Mr. Hanger: I do not think it is material to any charge here.

General Crane: Well, of course, if you do not agree to it, I won't offer it here; but then I will offer it in another connection.

Mr. Hanger: You can read it if it is admissible—but I do not think it is admissible.

General Crane: Yes. Well, make your objection, then.

Mr. Hanger: Mr. President.

The Chair: Yes.

Mr. Hanger: It is not objected that this is offered in this form, but the objection is desired to be made going to the admissibility and ma-

teriality of the particular evidence offered here. The —(to counsel): Where are the charges, who has those charges?

Mr. Manager Bryan: Here they are (handing charges to Mr. Hanger).

Mr. Hanger: Here they are.

Mr. Manager Bryan: Thirteen.

Mr. Hanger: Thirteen, yes. Thank you, judge. Charge No. 13 reads (reading):

"That at the former investigation of Governor James E. Ferguson, he was specifically charged with misapplication of moneys of the State of Texas in the purchase of groceries, feed, automobile tires, gasoline, etc. The committee appointed by the House of Representatives found that he did so misapply several thousand dollars and converted same to his own use in the purchase of the items above enumerated. That before said Committee Governor Ferguson testified under oath that if the case of Middleton vs. Terrell, Comptroller, should be decided by the Supreme Court against him, that he would refund to the State of Texas such amounts misappropriated by him, in accordance with said decision. The Supreme Court long ago refused an application for writ of error and overruled a motion for rehearing, thus deciding against him, but James E. Ferguson is still indebted under said decision to the State of Texas for groceries, feed, automobile tires, gasoline, etc., which were for his private use, but which were paid with State funds, and he has failed to pay same in acordance with his oath before said committee of the House of Representatives. The report of the House Investigating Committee stated that the charge of misapplication of funds should not justify the serious penalty of impeachment, inasmuch as Governor Ferguson had testified that he would promptly pay said amounts to the State, and that in the judgment of the committee this agreement to repay should be considered in connection with the good faith of the Governor. That the said James E. Ferguson was guilty of a misapplication of the appropriation made by the Legislature for fuel, lights, ice, and incidentals, in that he used same in the purchase of groceries, feed, automobile tires, gasoline, etc., for his private use, and that his refusal to pay said funds constitute a continued misapplication of the public funds of Texas."

The charge of that article is embraced in the last paragraph. The attempt here is to prove the making of a contract with a grocery merchant for the furnishing of certain supplies in the future, the warrant for which was disapproved by the Comptroller, and the amount not paid. Now, we respectfully submit to the Chair that that is not made the basis of any charge here, not referred to in the article—in Article 13—and is not material to the charge here made, that he was guilty of a misapplication of the appropriation made by the Legislature, and is guilty of the continued misapplication by the conduct set out, and it refers to an entirely different transaction, which has no relevancy to any of the matters alleged here.

General Crane: Mr. President, our reading of this, our construction of it is different from that of counsel. This is the charge (reading):

"That said James E. Ferguson was guilty of a misapplication of the appropriation made by the Legislature for fuel, lights, ice and incidentals, in that he used same in the purchase of groceries, feed, automobile tires, gasoline, etc., for his private use, and that his refusal to pay constitute a continued misapplication of the public funds of Texas."

Now, we thought, Mr. President, that the Court was entitled to know exactly how he used these, and all of the circumstances attending it, so that they could properly judge of his intent. This is what we are seeking to show now is, that he made a contract with Mr. Achilles, a grocery merchant of Dallas—

Mr. Hanger: Austin.

General Crane: Or Austin—I beg your pardon, like Fort Worth, I always think everything is in Dallas—he made a contract with Mr. Achilles in which Mr. Achilles agreed to take over the cash that was then in the Treasury, of $1,796.00 and some cents that had been appropriated for the purchase of fuel, lights, ice and incidentals, and he agreed to furnish the "incidentals"—which meant groceries, as they interpreted it—to the Governor's Mansion, and to all those things as long as that money lasted. Now, that was the first, and that warrant was prepared and issued, but the Treasurer refused to honor it, and then, of course, that contract was abandoned. We think that the Court is entitled to that in-

formation as a part of the *res gestæ* and the method of undertaking to get that money. Now, further than that, Mr. President, that warrant—that contract we will be able to show was made after the District Judge in Travis County enjoined the Comptroller, or sought to enjoin him, from paying the items of a similar nature on an appropriation made for Governor Colquitt—did not enjoin the making of these, as a matter of course, because these were not directly involved, except as the same principle applied—and we think that the Court ought to get all those facts before it for the purpose of determining Governor Ferguson's intent and purpose in using that money for the purchase of incidentals.

The Chair: Have you anything further, Senator?

Mr. Hanger: No, sir, we have stated our position.

The Chair: Yes. The objection will be overruled, the Chair being of the opinion that the evidence is admissible on the question of intent.

General Crane: Yes, sir.

The Chair: I will state to counsel that Captain Stowe has been summoned, and if it is desired that he be put under the rule, he had better be brought up and be sworn—he is in the Chamber now.

General Crane: All right. Captain Stowe, come up and be sworn, please.

Thereupon,

CAPTAIN CHARLES L. STOWE,

presented himself at the bar of the Court, and was administered the following oath by the Chair:

"You do solemnly swear that the evidence you shall give upon this hearing by the Senate of Texas of impeachment charges against James E. Ferguson, shall be the truth, the whole truth, and nothing but the truth, so help you God?"

The rule has been invoked in this case, and you understand what that means. You are not to discuss the case with anybody except counsel, and not let anybody discuss it with you.

Mr. Hanger: It is agreed he may go to his office and be called when wanted.

The Chair: All right, Mr. Stowe, you may go to your office and be within reach when called.

General Crane (resuming): I will repeat, in order to get the connection (reading).

Q. There was a warrant issued from your office on that date—meaning October 28, 1915—purporting to be signed by you, for the sum of $1,796.65, payable to W. A. Achilles; was sent to the Treasurer's office, or carried there, and the Treasurer refused to pay it. Now, will you tell these gentlemen of the committee, what that $1,796.65 was for?

A. I can only say to the committee—it would be hearsay, and not by the record, but from recollection as to what the warrant was for—

Q. I beg your pardon; I don't want you to state any hearsay. You saw the statement upon which that warrant was based?

A. Yes, sir.

Q. What was it?

A. It was a contract between the Governor and W. A. Achilles.

Q. What for?

A. Groceries to be furnished, and other things. I don't remember, of course, the exact amount, but whatever the amount is.

Q. $1,796.65—says the questioner. That is on October 28, 1915?

A. Yes, sir. That was the amount of the expended appropriation at that time.

General Crane: It meant unexpended, that is what it was, lacking about $10.

Q. These groceries and other things, or mostly groceries, he is a grocery merchant, is he not?

A. Yes, sir.

Q. They were to be delivered to him at the Mansion for his use?

A. Yes, sir.

Q. For his family use?

A. Yes, sir.

Q. Now, as a matter of fact, those groceries had not been furnished, but were to be furnished in the future?

A. Yes, sir, that is true.

Q. And it was upon that basis that the warrant was issued?

A. Yes, sir.

Q. The Treasurer declined to pay it?

A. I would like to make a statement—

Q. Answer the question first, and then you are entitled to make any statement you want to.

General Crane: A statement then

by Mr. Hanger: "I want to make this statement. There is no objection to this testimony, and none will be made; however"—then there was some question of a wrangle, but I will not read all those unless counsel insist upon it—the argument between counsel. The question then to the witness:

Q. Did the Treasurer refuse to pay that warrant based on that contract for future delivery of goods?

A. The Treasurer brought the warrant into my office.

Q. Answer the question, "Yes" or "No."

A. I am trying to answer it.

Q. You know how to answer that: did he refuse to pay it?

A. He brought the warrant into my office to confer with me about the warrant.

Q. Do you know whether he refused to pay it or not?

A. It was not paid, of course.

Q. It was not paid?

A. No, sir.

Q. Then you can make your explanation as to what occurred?

A. To begin with, I want to make this statement to the committee: that the Governor sent for me and told me of this contemplated contract, and stating that he did not care to issue warrants from time to time to take up this amount, and wanted to issue this one warrant covering the amount under the contract with Achilles, in order to save time. I replied to the Governor that in my opinion it would not be permissible, because it was a contract for future deliveries, and the Comptroller, in many instances, had refused to issue warrants for money unexpended. I left his office and went back to my chief clerk and told him of the conversation with the Governor, and I told him to see that the warrant was not issued on such account. I heard no more from it for several days until Mr. Edwards, the State Treasurer, walked into my office with the warrant in his pocket and says, "I want to ask you about this," and when he asked me about it, and about the contract, I said that I would not issue a warrant on it. He told me that my office had already issued the warrant and that he had it in his pocket, and that he came over to discuss the matter with me about the advisability of paying it. I says, "If you will give me the warrant, I will have it canceled"; I didn't intend for the warrant to be issued on that, because it was to be delivered in the future. He gave me the warrant and I had it canceled.

Q. Who was to get that money in the meantime before the groceries were delivered?

A. It would go to Achilles & Co.

Q. The amount of the appropriation for that account was $2,000 that year?

A. Yes, sir.

Q. That amount, $1796.65, would clean up that entire $2000 appropriation, lacking $10, wouldn't it, at that time?

A. Yes, sir.

Q. That would be just $10 less.

A. Yes, sir; it was intended to clean up the appropriation, but there was $10 error in the figures.

Q. It was intended to clean up the appropriation of October 28, 1916, but they made a slip of $10?

A. Yes, sir.

General Crane: Now, we offer in evidence at this time the warrant with the name torn off. Let's see, where is Mr. Hanger?

Mr. Henry: Go ahead.

General Crane: Well, what I wanted to suggest was, the warrant just in that form, we don't want to produce the warrant, we offer the warrant with the name torn off, it is here somewhere in the record.

Mr. Henry: Go ahead.

General Crane: All right. We now offer, with the consent of counsel understood, that this warrant for this amount, $1796.65, be considered as in evidence, the name torn off, and canceled on the date as testified to by the Comptroller.

(The warrant just above offered in evidence is in words and figures as follows, to wit:)

No. 6552. $1796.65.

Treasury Warrant.

Comptroller's Office, Austin, Texas.
(Seal.) Oct. 28, 1915.

The Treasurer of the State of Texas, will pay to the order of W. A. Achilles and Co. out of any money appropriated by Act of June 14, 1915 one thousand seven hundred ninety-six and 60-100 dollars account of fuel, lights & etc., being for Mansion & grounds.

Compared. Registering. H. G. Appropriation. No. 16X.

General Crane: Will the Chair indulge us until Mr. Hanger returns?

The Chair: Yes.

(Mr. Hanger shortly returned, whereupon the proceedings were resumed as follows:)

Mr. Henry: That is all right.

General Crane: Now, Mr. President, it has been agreed that these items for which money was paid are correctly stated in the exhibits hereto attached in this printed form, and that the money was paid to grocery merchants, like Q. M. Crockett, fruits, cantaloupes, beans, etc., to the Gulf Refining Company for gasoline, and to other companies of a similar kind; to Hill & Hill, grocerymen, to Boatman, dealer in pure sweet milk and cream; to Baggett, dealer in butter and eggs; to Tom D. Smith, dealer in groceries; to Kallgren & Lindahl, dealers in corn, beans, oats and hay; and that the total amount—it is agreed that the total amount of money paid out of the State Treasury for these items were known as "incidentals," constituting the things that I speak of, amounted to $2403.55; that they do not—this does not include the items for which deficiency warrants were afterwards issued; that these groceries were bought, the accounts show, during the years 1915 and 1916.

Mr. Harris: Automobile accessories.

General Crane: Automobile accessories, too, yes.

General Crane: Now, Mr. President, in this same connection we desire to offer what we deem to be admissions of the Governor of facts that are involved in the record, and having in mind the suggestions made by the Chair, and the objections made by opposing counsel, I have thought of making these additional statements to the Court in offering this testimony.

I think that, apart from Texas, so far as adjudicated cases can be found and authorities, all of which are in other States, the only ones—and I found very few of them—seem to denominate an impeachment case as a criminal case, but in Texas I don't believe that that construction will obtain. In the Constitution the jurisdiction of the District Court, Section 8, says:

"The District Court shall have original jurisdiction in all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct."

Now, I find in the jurisdiction of the County Court that:

"The County Court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices' Court as the same is now or may hereafter be prescribed by law."

Now, in other words, Mr. President, I think that the intent of the Constitution makers is pretty clearly shown that they intended to define crimes into felonies and misdemeanors, and that of felonies and misdemeanors they intended to give two courts of record, with the justice's court, complete and exclusive jurisdiction, and therefore that it is a misnomer to call an impeachment proceeding a criminal proceeding. Whatever references there may be to it in the Constitution that might bear that sort of construction, the affirmative legislation of constitutional intention upon the subject of crime, makes that conclusive. Now, I also found that Alabama is very clear in announcing impeachment proceedings as criminal. I think that a matter called a crime ought to be determined by its intrinsic qualities and the punishment to be attached thereto, rather than to a name. Alabama, as I said, says that, and in several well considered cases, one or two—two or more denominates it a criminal offense. But Alabama also says that a proceeding to disbar a lawyer is a criminal offense, and, if I mistake not, in these casese in which they deal with impeachment as a criminal case they quote the case of Ex Parte Garland, in which it was sought to deprive him of the right to practice law in the Supreme Court of the United States because of his participation in the war of the States on the Confederate side. It was there held that that punishment could not be administered to him because it was a punishment, and they concluded that because there was a punishment administered, that therefore it was a criminal case. Now, the Supreme Court of Texas has disposed of that part of it. It held in a very well considered opinion that a motion to disbar counsel or to deny a lawyer the right to practice law—in other words, if the Court please, to remove him from the office of an attorney at law, an attorney of the Court and an officer of the Court, that that was a

civil and not a criminal proceeding; and I refer now to the case of Scott vs. State, 86 Texas, 321,—the opinion is by Judge Gaines,—and in this case the question was directly presented:

"This proceeding was instituted in the District Court of Bosque County, in the name of the State of Texas, against the plaintiff in error, for the purpose of revoking his license to practice law and to strike his name from the roll of attorneys. There was a judgment against him, from which he sued out a writ of error to the Court of Civil Appeals of the Second Supreme Judicial District, and upon motion of the Attorney General the cause was there dismissed. The question of the correctness of the Court's ruling in dismissing the writ is now before us for determination.

"The ground of the motion to dismiss was, that this is a criminal case, and that therefore the Court of Civil Appeals did not have jurisdiction over it. * * * It is true that a proceeding to disbar an attorney may be highly penal in its result. If disbarred, he is deprived of the right to pursue and reap the profits of a profession, to fit himself for which he may have spent years of toil, and upon which he is dependent for a livelihood. But the object of the proceeding is not to punish him for his misconduct, but merely to protect the court and the public against a person already licensed, who has shown himself unfit to be entrusted with the high and responsible duties of an attorney."

Now, if I may be permitted to paraphrase that, an impeachment proceeding is not an effort to punish the man holding the office, but it is merely to protect the public against a person who has shown himself unfit to be entrusted with the power that the office gives him.

"The loss of his privilege"—talking of the attorney now, said the Court—"is a necessary incident of his disbarment, but it is merely an incident. In Ex Parte Brounsall, Cowper, 829, Lord Mansfield distinctly says: 'It is not by way of punishment, but the courts in such cases exercise their discretion whether a man they have formerly admitted is a proper person to be continued on the roll or not.' This language is quoted with approval in Ex Parte Wall, 107 United States, 265, and in The State vs. Winton, 11 Oregon, 456, in both of which cases the same doctrine is announced.

"Now, a criminal case is defined to be 'an action, suit, or cause instituted to secure conviction and punishment for crime.' (General Crane: Quoting that with approval from Abbott's Law Dictionary).

"Argument is hardly necessary to maintain propositions so clear in themselves and so well supported by authority, and it inevitably follows that the present proceeding is not in its nature a criminal case. It was so held in Ex Parte Wall, supra (in the United States Supreme Court), where the question was directly presented. We doubt if any case can be found in which the contrary is held, except that of The State vs. Tunstall, 51 Texas, 81, which we shall consider further on in this opinion.

"There is a line of cases which hold that a proceeding to disbar an attorney, while not a criminal case, partakes of the nature of a penal action. In matter of a case (which is left blank), 1 Hun, 321, it is held that the judgment can only 'be sustained by evidence free from serious doubt.' The court says, 'the proceeding is penal.'

"In matter of Baluss, 28 Michigan, 507, Judge Cooley says that 'while not strictly a criminal proceeding, it is of that nature, and the punishment, in prohibiting the party from following his ordinary occupation, would be severe and highly penal. The majority of the court are not satisfied that the evidence gives such clear support to the charges as should be required in such cases, and the application will therefore be denied.' "

In the 41st Indiana, "the court holds that the provisions of a statute for the suspension of an attorney are 'penal in their nature, and should be strictly construed.'

"In Thompson vs. The State, 58 Alabama, 365, the court says that 'tne proceeding, though not strictly criminal, is of the nature of a criminal proceeding, and it is essential to support it that the information should with certainty disclose that the defendant is amenable to the proceeding and the facts constituting the misconduct of which complaint is made.'

"All these rulings may be correct. They do not conflict with the con-

clusion we have anounced. While the object of the proceeding is not punishment, such is the unavoidable result, and therefore it may be that a statute affecting it should receive a strict construction; the complaint should have all the certainty of an indictment, and the evidence should sustain the charge beyond a reasonable doubt, although it be not a criminal case. Peyton's Appeal, 12 Kansas, 398, goes farther, and holds that the proceeding is so much in the nature of a criminal action as to entitle the defendant to a change of venue under their statute allowing such change in criminal cases.

"It is due to the Court of Civil Appeals to say that they probably felt constrained to dismiss the appeal by reason of the ruling in the case of The State v. Tunstall, above cited. That was a proceeding instituted in the District Court to disbar an attorney, and the court held that it was a criminal case, and that being such, the Supreme Court had no power to hear and determine the appeal. But it seems to us that that ruling is based upon the language of the old statute, which was repealed by the Revised Statutes now in force. If it be admitted that the Legislature had the power to treat as a criminal case one which is essentially civil in its nature, and thereby deprive the Supreme Court, as it then existed, of a jurisdiction conferred by the Constitution, it is clear to our minds that in enacting the provision of the Revised Statutes upon this matter they intended to do no such thing. The mere facts that the proceeding is to be conducted in the name of the State, and that the statute uses the language, if 'the attorney be found guilty,' do not evidence such intention. Rev. Statutes, Articles 228-233. On the contrary, the revised Penal Code and Code of Criminal Procedure, which were passed at the same session of the Legislature, expressly declare, that it was the purpose of the Legislature in the one to define every offense against the laws of the State (Penal Code, Article 1), and in the other to make rules of procedure in respect to the punishment of offenses intelligible to the officers of the State and to the persons to be affected by them. Code Criminal Procedure, Article 1. The one does not define the acts for which an attorney may be disbarred, nor does the other establish the procedure applicable to such cases. The statutory regulations in regard to the proceedings for disbarment are embodied, as we have seen, in the Revised Civil Statutes, and we think that they were appropriately incorporated in that body of laws.

"This proceeding was instituted before the adoption of the recent amendments to Article 5 of the Constitution. The ruling is, that original section 8 of that article not only defined the jurisdiction of the District Courts, (General Crane: That is the one that I read), but that the Legislature had no power to confer other jurisdiction upon them."

General Crane: That is an argument not necessary to pursue here. That being the result, Mr. President, I believe that in Texas it would be held, it should be held to be a civil and not a criminal proceeding within the meaning of that statute. I will not read the Federal decision because it is in effect the same as that, and, besides that, is the one that is conclusive anyway, and it is simply supported by the Federal decision.

The Chair (There being some disorder in the Chamber): Let us be in order, please.

General Crane: But without stopping there, Mr. President, the civil statute—I concede it does not say "impeachment," but the civil statute providing for removing other officers than those named, for impeachment purposes and by a different tribunal—by the District Court instead of this Court, defines the act as a civil proceeding, and that act of removing that officer by a decree of the District Court involves every kind and character of testimony that may be introduced here; he may be removed for bad conduct or otherwise, but it is essentially a civil case—so the statute says. And why? I take it, for the same reason that Judge Gaines said about removing an attorney. The officer is deprived of the emoluments of his office and, except in certain contingencies, not permitted to hold office again. So far as the intrinsic character of the proceedings, it is the same; so far as the penalty assessed, it is practically the same. And, therefore, the only difference is the two courts—one this Court and the

other the District Court; and I take it, therefore, that if that is not a criminal proceeding, then this could not be either.

The other feature, however, to which I wish to direct the attention of the Court is that even if I be wrong on this subject, if I be incorrect, and if the Chair holds that it is a criminal case, and I have practiced law so long that I sometimes find that the Courts do not always agree with me (laughter) and I have on occasions even conceded, long after the decisions were rendered, however, that perhaps the Courts would be correct. I take it that is true of all of us. But even if we concede, and if the Court should find that this is a criminal case, within the meaning of the Constitution, then I submit that the Legislature did not have that in view, and that the statute under which this objection is made does not, in terms, include an impeachment proceeding within the exception. Now, have we that statute here?

Mr. Hanger: It is on the Chair's desk.

Mr. Harris: Here it is, Article 5517.

General Crane: 5517. We have it here, Mr. President, without troubling you; here it is.

Now, let us give this the same meaning that we would ordinarily, keeping in mind that when a Legislature uses a word in a statute that it is supposed to mean something; in other words, the presumption must be indulged that the Legislature intended something by every word that it employed. Now, all right. Now (reading from statute): "In the investigation of any public officer elected by the Legislature"—

A Voice: What article is that?

General Crane: 5517. (Reading of statute continued): "In the investigation of any public officer elected by the Legislature, or the qualified voters of the State of Texas, or of any nominee of any political party in said state for election by the Legislature, or qualified voters thereof, to any public office in respect to matters or charges that reflect upon the personal or official integrity of such public officer or nominee, or that disqualifies, or tends to disqualify, such public officer to hold the office to which he has been elected or nominated by any political party, or any investigation of any other matter, or for any other purpose that may be ordered by the Legislature of this State, or either house of such Legislature, before any committee heretofore appointed by the Legislature, of this State, or by either house of said Legislature, and now pending, or before any committee that may hereafter be appointed by the Legislature of this State, or either house thereof, at this or any subsequent session, such investigating committee, and each member thereof, shall have full power and authority to administer oaths"—

General Crane: Now, here is the part to which I invite particular attention: "To administer oaths to officers, clerks and stenographers that it may employ in connection with the performance of its duties, and to any witnesses and parties called to testify before it; and said investigating committee shall have full power and authority to issue any and all process that may be necessary to compel the attendance of witnesses and the production of any books, papers and other written documents it may designate, and to compel any witness to testify in respect to any matter or charge by it being investigated, in answer to all pertinent questions propounded by it, or under its direction, and to fine or imprison any witness for his failure or refusal to obey the process served on him, by such committee, or to answer any such pertinent questions propounded; provided, that such fine shall not exceed one hundred dollars, nor shall imprisonment extend beyond the date of adjournment of the Legislature then in session; and provided, further, that the testimony given by a witness before such investigating committee shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury committed before such committee."

General Crane (resuming argument): The point to which I wish to direct attention is that this protection is for the witness and not the party being investigated. The party is mentioned clearly and distinctly only once, and that is when the authority of the members of the committee to administer oaths is given,

and that is that they may administer oaths to these officers, clerks and stenographers, to the parties, and to the witnesses; and then when it undertakes to define who witnesses may be, how their attendance may be procured and they be compelled to testify, it limits itself, it seems to me, to the witnesses, and does not include the parties.

Now, it would be rather singular, if the investigation of a man—a defendant, with a view probably of introducing impeachment proceedings against him, if it be found necessary so to do, that the party himself may make any statement be chooses, voluntarily, within that proceeding, and at the same time be absolutely protected, and it cannot be quoted against him anywhere else—I acquit the Legislature of any such intention, because the Legislature well knew when it passed this Act that a man charged with treason against either the State or the Federal government, charged with murder, rape or robbery or arson, charged with burglary, or anything else—that if he goes on the witness stand in a preliminary proceeding before a justice of the peace or a magistrate and makes a statement, that that statement can be introduced against him anywhere and any time, if it is voluntarily made; and I am sure that they did not intend to change the rule as to a defendant or a respondent in an impeachment case, but what they did seek to do was to protect the witnesses who may be called to testify, in order to give the public the evidence against the party being investigated, to protect them against any proceeding in any criminal case for anything that that evidence might disclose, except perjury. That is public policy, and that seems to me, Mr. President, to be in accord with the entire policy of the State.

Now, as associate counsel has aptly suggested, this protection, now, to the witness—it does say that it shall not be used against him in any criminal proceeding nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury committed before such committee. Now, that language proves two propositions—first, that it is to protect the witness and not the other man; suppose that you have an investigation—an investigating committtee, and the party charged comes before that committee and admits that he is guilty of every crime in the calendar against the public—that he has embezzled the public funds, that he has violated every law by which his office is governed—he comes and frankly tells the committee that. Now, is there a lawyer within the sound of my voice who believes that that committee would be powerless to report to the Legislature that fact, and that the Senate, sitting as an impeachment court, would be deprived by this statute from using that man's confession of his incompetency and his unworthiness to fill that office. Was it the intention of the Legislature to silence the tongue, to cut out the confession and to make the people at home—the taxpayers and those who are to be protected by law, and its officers who are supposed to execute it, are they to be left entirely powerless? Was that the meaning of the Legislature? I acquit it of any such crime; I don't believe they so intended it, nor do I believe that language justifies that construction.

Now, Mr. President, you will observe that I have confined myself to the Texas statutes and to the Texas authorities, admitting frankly, as I do, that most of the authorities that I have been able to find outside of Texas classify impeachment as a criminal case—criminal proceeding; but conceding that they are right so far as they go, I believe that the Texas authorities, by necessary inference, make it a civil proceeding; and now I call your Honor's attention to the fact that a quo warranto proceeding is a civil case, although it provides that the party ousted from an office or the corporation ousted, may be fined as well.

I have felt that I owed this much to the Court and to the Presiding Officer before asking the introduction of this testimony, and I have stated the questions as clearly as I know how.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: I wanted to ask General Crane, before counsel for respondent answers, to state again, very briefly, I know he will, exactly what he is now proposing to offer, its purpose and scope, not only so the court will understand counsel,

but when counsel for respondent answers, the court will also be well aware.

Senator Bailey: After General Crane is through I want to offer a resolution.

The Chair: Very well.

General Crane: Well, frankly, Senator, that would be rather an extensive sort of a statement. I want to offer all of the statements that we deem pertinent, that he has made, in reference to the conduct of the Temple State Bank, in reference to the payment of the $5,600 of his private debt out of the Governor's funds which were held in the Temple bank, all of his statements that he has made about the payment of his grocery bills and other expenses out of the public Treasury, that we deem necessary, and all of the statements that he had made on each and every one of the accounts. You will observe that this record is rather large, and this is not all of it, all that is laid there—it would be a little difficult to state it with particularity just now.

Senator Bee: That meets the suggestion I had in mind. I just wanted to settle in my mind whether you proposed to offer the testimony of the Governor before the investigating committee, or excerpts from it.

General Crane: No, sir, we propose to offer such excerpts as we think are applicable, recognizing the rule that they would be entitled to offer what we omitted on the same points.

Senator Bee: I understand.

Senator Bailey: Mr. President.

The Chair: The Senator from DeWitt.

Senator Bailey: I offer the following resolution:

The Chair: Is it for the Senate, or the Court?

Senator Bailey: I think it can be adopted by the Court. If not, I offer it as a motion. I think it can be adopted as a resolution under the rules.

The Chair: Mr. Hanger, counsel for Respondent, desires that the Court stand at ease for a few minutes until he can get up and get together a few authorities for use in his argument. Is there any objection by counsel or the Court?

General Crane: There is no objection here.

The Chair: We might consider this now. Mr. Hanger will be excused, and when we consider this resolution we will stand at ease if Mr. Hanger has not returned. The Secretary will read the resolution.

Thereupon the Secretary read the resolution as follows:

"Resolved, That for the purpose of discussing and considering the objections to reproducing from the House Journal the original evidence of Hon. J. E. Ferguson in the matter of his impeachment, as well as the admissibility of such evidence, the Senate retire to its consultation room and go into executive session after counsel for the Board of Managers and also the Respondent have concluded their arguments." (By Bailey.)

A Senator: Second reading.

The Chair: A second reading is called for.

(Thereupon the Secretary again read the resolution.)

Senator Bailey: Mr. President.

The Chair: The Senator from DeWitt.

Senator Bailey: I move the adoption of the resolution.

The Chair: The Senator from DeWitt moves the adoption of the resolution.

Senator Bailey: Of course, we will simply discuss the matter and speak in executive session. We can do so much more freely than in open session. I take it that it will be impossible for Senators to discuss this matter without disclosing more or less their positions in this impeachment proceeding. If not in direct language, their remarks will indicate the trend of their minds. I believe it would be better for us and better for the proceeding that when counsel have concluded their arguments, both for the Board of Managers and for the Respondent, that we then go into executive session, or, rather, as the rules provide, into our consultation room, which will necessarily be here, and discuss the matter with ourselves and among ourselves and then come out and vote in the open Senate. I yield to the Senator from Bexar.

Senator Bee: I, of course, understand that the Senate has the power and is absolute and supreme within its own wishes and own judgment; but does the Senator from DeWitt believe that the best purpose would be subserved for the Senate of Texas sitting as a Court—not as a Senate, but as a Court—to discuss in secret sessions out of the presence of the Respondent—I am not speaking of the Board of Managers of the House or the prose-

cuting counsel, I am not speaking of counsel for the Respondent, but under the constitutional right of the Respondent I propound that inquiry to the Senator, without expressing an opinion on it.

Senator Bailey: I think, Senator, we have as much right to discuss it out of the presence of the Respondent as a petit jury would out of the presence of the defendant. We occupy here in the Court the attitude of both judge and jury. The Chair can submit this question as an original proposition to us under the rules of procedure which we have adopted in the first instance, and to my mind it is possible and more than probable that in a question of the gravity involved in this question the Chair will probably do that, or if he does not, we can appeal from the decision of the Chair, and I leave it to the better judgment of the Senate. I simply offer this resolution for what it is worth. I think myself it would be better for us to retire to our consultation room, which will necessarily involve going into executive session, because the condition of the weather is such that it would be uncomfortable for us to be crowded in one of these committee rooms. If the Senate thinks it better to discuss the matter here in open session in a running debate, where we will be forced to make our remarks and answer all the questions propounded to us, what may be the condition of our minds at the time, then I yield to the wisdom of the Senate. If, on the other hand, the Senate thinks it better to retire where we will have this matter all to ourselves, we will be freer to discuss it among ourselves, and if we do disclose the trend of our thought or the condition of our minds it will be for ourselves and among ourselves, and our positions will not be known in the matter until all the evidence is in and the arguments are concluded. Then I hope the Senate will adopt this resolution.

Senator Bee: Will the Senator yield?

Senator Bailey: Yes, sir.

Senator Bee: I agree with the Senator from DeWitt in the purpose and belief that it would contribute to a freer and fuller discussion to have it among ourselves. Couldn't we do this without a motion, that this Senate, as a Court, go into executive session, reach the same conclusion by standing at ease for a limited length of time and then let the Senators have their consultations as they choose to have them, without having it appear of record?

Senator Bailey: I am afraid, Senator, that plan would resolve itself into a number of little caucuses instead of meeting here to discuss a broad proposition of law, as a cold and critical proposition of law. I do not want this case to go off on a technicality so far as I am concerned. I do not think it is right to the people for it to go off that way, and I think the Senate ought to get together as a whole Senate and find out how they do feel about it before our minds are fully made up, to sit down here among ourselves and give ourselves the benefit of whatever research any of us may have made, before we go back into open session and vote.

Senator Bee: Will the Senator yield again?

Senator Bailey: Yes, sir.

Senator Bee: Wouldn't it be better to let your resolution lie on the table until after counsel for the Board of Managers and for the respondent have argued the question thoroughly, then let your motion be considered by the Senate?

Senator Bailey: I will accept that proposition. I understand the Chair has ruled that we have a right to suggest to counsel for either the Board of Managers or the Respondent any point we may desire them to argue while they argue.

Senator Bee: And have the right, if the Senator will permit, further—

Senator Bailey: Yes, sir.

Senator Bee: That the Chair has also ruled that this Senate, sitting as a Court, has a right to present their individual views on the law questions.

Senator Bailey: Then, Mr. President, I move that the resolution lie on the table for the present.

Senator McNealus: Mr. President.

The Chair: The Senator from Dallas. Does the Senator from DeWitt yield?

Senator Bailey: Yes, sir.

Senator McNealus: What has transpired in your mind at this time that would necessitate or impress you with the idea that there is any necessity for the Court to go into executive session at this time?

Senator Bailey: Nothing, Senator, except the fact that we might be able to get freer expressions from the Senators. I think they would feel more comfortable to discuss this

legal proposition among themselves, that they would have greater latitude given them than if they were discussing it in public.

Senator McNealus: Senator, do you think it is the proper time to discuss this question before the evidence is in?

Senator Bailey: Yes, sir, as a matter of law, it is permissible.

Senator McNealus: This is not a matter of law, statutory law; it is a matter of the organic law.

Senator Bailey: Well, Senator, this is a legal question—the admissibility of Governor Ferguson's testimony, the reproduction of his testimony, original testimony, in the House, whether or not it shall be reproduced here, is to my mind clearly and purely a legal proposition, resting largely, as General Crane and others have indicated here, upon whether or not this is a criminal proceeding.

Senator McNealus: Senator, don't you believe there is plain enough language in the Constitution to guide us without referring to all the statutes? We laymen don't look to the statutes very much; we look to the provisions of the Constitution and think they are clear enough without referring to all the statutes, and there is nothing said in it about the Court going into executive session. I am not referring to the general scope of the trial, but I think we ought to be governed exclusively by what the Constitution provides, and that is so simple a layman can understand it as well as lawyer.

Senator Bailey: Senator, those are the very questions we will have to discuss—the interpretation of the statutes and other constitutions—and that will necessarily involve the opinions of the different courts.

Senator McNealus: Well, I will say to the Senator from DeWitt, then I don't feel bound to go into any executive session if I don't want to.

Senator Bailey: No, sir.

Senator McNealus: And I don't think the Senate as a Court ought to go into executive session at this time, if ever.

Senator Bailey: Then, Senator, vote against the resolution.

Senator McNealus: And I will step out. I want the public to know everything transpiring here up to the time the session ends.

Senator Bailey: That is the Constitution which is so dear to your heart and which you love to quote so much here. You know an executive session is provided for in the Constitution.

Senator McNealus: I challenge the Senator or any other man to show where the High Court of Impeachment shall go into executive session, if you have rules or if you don't have rules. The Senate as a Senate can go into executive session, but you don't find any authority in the Constitution for the High Court of Impeachment to go into executive session. This is not the Senate, but the High Court of Impeachment, that is the difference between the two.

Senator Bailey: It is a matter for the Senate. If they think it advisable to do so they can vote down my resolution and I will take it in good part.

Senator Johnston: Mr. President.

The Chair: The Senator from Harris.

Senator Johnston: I raise the point of order that this is all out of order. The Senator who introduced the resolution has agreed to let it lay over until the arguments of counsel are finished.

The Chair: The motion is that the resolution of the Senator from DeWitt lay over until the close of the arguments. Those in favor say "aye" and those opposed "no." The motion is carried and the resolution will now lie on the table.

Senator Bee: I move that we stand at ease until such time as Senator Hanger is ready to proceed, subject to the call of the Chair.

The Chair: The motion is that we stand at ease until Senator Hanger is ready to proceed, subject to the call of the Chair. Those in favor of the motion will let it be known by saying "aye" and those opposed "no." The motion prevails, and we will stand at ease subject to the call of the Chair.

(Thereupon the Court stood at ease from 11:15 o'clock a. m. until 11:35 o'clock a. m., at which time the Court reconvened.)

The Chair: The Court will come to order.

Senator Bee: Mr. President.

The Chair: Senator Bee.

Senator Bee: In consultation with Senator Hanger he informs me that he is not entirely ready to proceed, and it occurred to me, as it is now

twenty-five minutes to twelve, that it would better enable him to get his argument in better shape and at the same time not break into it in a few minutes if the Court would rise at this time to meet at 2 o'clock. I move, therefore, that the Court rise and meet at 2 o'clock, at which time counsel will be ready to proceed.

(Thereupon, at 11:40 o'clock a. m. upon motion of Senator Bee, the Court recessed until 2 o'clock p. m.)

After Recess.

Tuesday, September 11, 1917.

Afternoon Session.

(Pursuant to recess, the Court reconvened at 2 o'clock p. m.)

The Chair: The Court will come to order. The Sergeant-at-Arms will please see that only those entitled to the privileges of the Chamber remain inside.

Sergeant-at-Arms: All those who have not the privilege of the floor will please retire.

Senator Dayton: Mr. President.

The Chair: The Senator from Cooke.

Senator Dayton: I ask the unanimous consent to send up and have read a committee report.

The Chair. The Court is called to order. If the Senator from Cooke will hold that until 5 o'clock, he can then send it up.

Mr. Harris: Yes, sir, I wanted just about five minutes of the Senate's time. I may repeat in some particulars, but I will be just as brief as possible, though. Counsel for Respondent has cited Section 10, indicative that impeachment was a criminal proceeding. As I view the law, the Constitution defines crime, in Section 8 and in Section 16—defines crime and divides it into two classes, felonies and misdemeanors, and gives the Court jurisdiction over the same; and Section 8 provides that the Criminal Court shall have jurisdiction over all felonies.

The Chair: What article is that?

Mr. Harris: Section 8.

The Chair: The Article?

Mr. Harris: Section 5. The District Court shall have original jurisdiction. Section 16 of the same article it is provided, "The County Court shall have original jurisdiction of all misdemeanors," and it is our contention that the Constitution divides crime into two classes, and defines the classes as felonies and misdemeanors; and I wish to call the Chairman's—the Presiding Officer's attention, and the attention of the members of the Court, to the provisions of the Penal Code and the Code of Criminal Procedure, as I wish to read from the Supreme Court decisions discussing that Article and Sections 1, 2 and 3 of the Penal Code. "Article 1, design of the code. The design of enacting this code is to define in plain language every offense against the laws of this State and affix to each offense its proper punishment."

"Article 2, the object of punishment is to suppress crime and reform the offender."

"Article 3, all penalties must be affixed by written law. In order that the system of penal law in force in this State may be complete within itself—"

A Senator: Mr. President, I wish to ask for better order in the Senate Chamber. There is so much confusion we cannot follow the gentleman's argument.

The Chair: Just a minute, Mr. Harris. We request that everybody be in perfect order in the Chamber; we cannot hear the speaker and cannot hear the evidence that is offered, and we cannot proceed with the decorum with which we should proceed unless we have order. Let's try to have perfect order this afternoon.

Mr. Harris: I will read again, for fear the Senator did not hear it. The Penal Code, this is the first Article. "The design of enacting this code is to define in plain language every offense against the laws of the State, and affix to each offense its proper punishment."

"Article 2, the object of punishment is to suppress crime and reform the offender."

"Article 3, all penalties must be affixed by written law. In order that the system of penal law in force within this State may be complete within itself, that no system of foreign laws, written or unwritten, may be appealed to, it is declared that no person shall be punished for any act or omission, unless the same is made a penal offense and a penalty is affixed thereto by the written law of this State."

And I wish to read from the decisions of our State just one article. The object of this article was to pro-

hibit prosecution for what was an offense at common law, but not made penal by our statutes. The first article of the Code of Criminal Procedure provides,—

"It is hereby declared that this Code is intended"—

And it is headed, "Objects of this Code,"—

"It is hereby declared that this Code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this State, and to make the rules of proceedings in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. It seeks—

"First, to adopt measures for preventing the commission of crimes;

"Second, to exclude the offender from all hope of escape;

"Third, to insure a trial with as little delay as shall be consistent with the ends of justice."

Now, the—our Court—it is my contention that the Legislature plainly indicated an intention to define in one body of laws everything that was a crime, and they state regardless of what might have been the common law, and regardless of what might be the laws in other States and approved procedure in reference to crimes. Now, you will not find either disbarment of attorneys or impeachment proceedings defined as criminal, and you will find no proceedings here in reference to impeachment proceedings. Now, our Supreme Court, in the disbarment case General Crane read, considered the very provisions I have read, to determine whether or not the disbarment proceedings under our laws are criminal in their nature, and Justice Gaines said:

"It is due to the Court of Civil Appeals to say that they probably felt constrained to dismiss the appeal by reason of the ruling in the case of the State vs. Tunstall, above cited. That was a proceeding instituted in the District Court to disbar an attorney, and the Court held that it was a criminal case, and that being such, the Supreme Court had no power to hear and determine the appeal. But it seems to us that that ruling is based upon the language of the old statute, which was repealed by the Revised Statutes now in force. If it be admitted that the Legislature had the power to treat as a criminal case one which is essentially civil in its nature, and thereby deprive the Supreme Court, as it then existed, of a jurisdiction conferred by the Constitution, it is clear to our minds that in enacting the provision of the Revised Statutes upon this matter they intended to do no such thing. The mere facts that the proceeding is to be conducted in the name of the State, and that the statute uses the language, if 'the attorney be found guilty,' do not evidence such an intention. On the contrary, the Revised Penal Code and the Code of Criminal Procedure, which were passed at the same session of the Legislature, expressly declare that it was the purpose of the Legislature in the one to define every offense against the laws of the State (Penal Code, Article 1), and in the other to make rules of procedure in respect to the punishment of offenses intelligible to the officers of the State, and to the persons to be affected by them. Code of Criminal Procedure, Article 1. The one does not define the acts for which an attorney may be disbarred,"—

And I can say here, paraphrasing, that that one does not distinguish the case for which a Governor may be impeached—"nor does the other establish the procedure applicable to such cases."

The Chair: Mr. Harris?

Mr. Harris: Yes.

The Chair: What is the date of that decision you just read, and by whom written?

Mr. Harris: By Justice Gaines, it doesn't give the date here.

Mr. Henry: 1894, Scott vs. State, 86 Texas. Oh, yes, delivered January 15, 1894.

Mr. Harris (to Mr. Henry): Much obliged to you (continuing reading): "The statutory regulations in regard to the disbarment are embodied, as we have seen, in the Revised Civil Statutes, and we think that they were appropriately incorporated in that body of laws."

Now, this Court, as I understand this decision, based its decision, partly, at least, upon the view that the Legislature had indicated clearly an intention that everything that should be criminal in this State should be set forth in the Code of Criminal Procedure, and everything that was civil should not be included there, such is the view taken by the Supreme Court of it. They do not define impeachment in the Code of Criminal Procedure—I mean in the

Criminal Code. Where is the statute?

Senator Hudspeth: Pardon me, Mr. Harris, that decision was based upon the statute, wasn't it?

Mr. Harris: Sir?

Senator Hudspeth: That decision was based upon the statute, wasn't it?

Mr. Harris: Upon the statute, and they discussed, Senator, the provisions of the Penal Code that I have read from.

Senator Hudspeth: Yes, we have no statute defining impeachment in this State, have we?

Mr. Harris: That is true. We go to the Constitution for that.

Senator Hudspeth: Yes.

General Crane: That is why the Court said a disbarment proceeding was no criminal action.

Senator Hudspeth: Yes.

General Crane: For the same reason.

Mr. Harris: I just wish to call the Court's attention, with reference to this statute, to the difference between this statute and the Federal Statute, first, and then I want to call the attention to the provision in the latter part of this statute. The latter part of this statute says, first, "Nor shall any criminal action or proceeding be brought against said witness on account of any testimony so given by him, except for perjury committed before the committee." Well, now, assume, if your Honor please, that the House of Representatives should begin an investigation looking to the impeachment of a party—the Governor, say—and there should be no evidence justifying impeachment introduced, but the Governor should voluntarily take the stand and while on the stand should disclose facts justifying his impeachment—would the House be denied the right to have impeachment proceedings on that testimony? I think not. And yet, if this statute is construed as contended by the atorneys for the respondent, such would be the effect. It says, "Nor shall any criminal action or proceedings be brought against such witness on account of such testimony," and if this were a criminal action, impeachment proceeding, we could not bring it against him based on his testimony, and we would have this situation—that he would take the stand with the knowledge that he might be acquitted on his testimony, and with the knowledge that he could not be convicted. Now, the Constitution provides that no witness shall be compelled to testify against himself, but the authorities now hold where a witness voluntarily takes the stand he loses that privilege and that immunity. Now, the difference I want to call your Honor's attention to between the State and Federal statutes,—the Federal Statutes make no distinction between parties and witnesses; this statute says that any witness can be made to testify, and further says that any member of the Committee, or Chairman of the Committee, can swear both the witnesses and parties; in one case it gives authority to swear witnesses and parties, and in another provision it deals only with witnesses; and I say that for its real construction, that we must give some meaning and intent to each word used where it can be done, and in giving that meaning and intent, I think that the construction would be that the Legislature intended to give the officers and members of this Committee the right to swear both witnesses and parties, but give them only the authority to compel the attendance of the witnesses. That is the first distinction. The second distinction is in the provision of the Federal Statute that does not appear in our law, and I get this provision of the Statute from the speech of Senator Bailey—it is Section 103 of the Revised Statutes:

"No witness is privileged to refuse to testify to any fact or to produce any paper respecting which he shall be examined by either House of Congress, or by any Committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous."

And even in the Federal Statute, which made no distinction between witnesses and parties, while ours does, even with the Federal Statute, which has this added provision, while ours hasn't such provision, many of the ablest lawyers in the Senate took the position that the statement of Respondent was admissible against him; and certainly, under our statutes, under our constitutional provision, the man who voluntarily takes the stand and there makes admissions against himself, these admissions ought to be admitted here, and I think that there is no law against their admission here, I do not think it was the intention

of that provision that the party who voluntarily testified should have that immunity, and they only intended that witnesses who were compelled to testify against the parties should have that immunity; otherwise, there is no meaning or no sense in the Legislature in using at one place "witnesses and parties," and in another place using the term only "witnesses." They must have had some reason for making that distinction, and the construction we place upon it is a reasonable one: that in one place, if the party wished to testify, that they would have the right to swear him, but they could not compel him to attend, and I think that is true—I don't think we could compel the Governor to testify over there to any facts criminal in their nature, and we never contended we did have that right, but expressly stated we did not have that right, as the record will show—as we are contending here; but we contended we had the right to compel him to testify to matters not criminating to him. But we were overruled on that, and were denied the privilege of introducing him.

Mr. Hanger: I hope, Mr. President, that I may be pardoned for again suggesting the extremity to which our friends are driven—for the other day we heard most emphatically that the reason why this testimony was admissible was because of the fact that the Federal Statute existed, and we had no similar statute in our State. We now, however, find ourselves discussing two propositions: First, whether or not, as Mr. Harris argues, or seems to argue, that it is a criminal offense, that we are trying to determine whether a criminal offense has been committed or not, but the question of whether or not this is a criminal trial, proceeding, action; and, second, whether or not there is that difference in these statutes—in this statute here, which withdraws the protection from a party when he becomes a witness, and that the rule as to a party is different because he is a party; he is not only just a witness then, but a party in addition to being a witness. Now, in addition to the authority in the case of Hastings—the Hastings case in Nebraska, to which we called the attention of the Court the other day—we desire to call the attention of the President and the members of the Court to many other holdings in this country, that this is a criminal trial and proceeding. You will remember that in the Hastings case, just to repeat, I think it won't take but a moment, in the 37th Volume of the Nebraska Reports, General Crane—

General Crane: What page?

Mr. Hanger: Page 96, and the following twenty or thirty pages (reading): "Impeachment is, with respect to the production of evidence and quantum of proof required to warrant a conviction, essentially a criminal prosecution, hence the guilt of the accused must be established beyond a reasonable doubt." Beginning with the doctrine on that subject in the fourth —I read from the fourth volume of Blackstone, and beginning with that down to this time, I undertake to say they cannot find a holding anywhere—I do not think they could find one by any court that is not a criminal action, I don't think they could. I read just a sentence. "But an impeachment before the Lords by the Commons of Great Britain, in Parliament, is a prosecution of the already known and established law, and has been frequently put into practice; being a presentment to the most High and Supreme Court of Criminal Jurisdiction by the most solemn grand inquest of the whole Kingdom—." "Being a presentment to the most High and Supreme Court of Criminal Jurisdiction."

Now, I read again, Mr. President, from the first volume of Mr. Story on the Constitution, page 582: (reading): "It is the boast of English jurisprudence, and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevail.

I now read just this one sentence from the American Law Review, Volume 16: Impeachments: "The review of the authorities and arguments which we have presented shows a substantial unity of opinion on most of the questions discussed. Impeachment is a criminal trial."

Senator Bee: What is that, Senator?

Mr. Hanger: The 16th volume of

the American Law Review. That is the decision of an English court.

Senator Bee: I understand.

Mr. Hanger: I call attention also to the 29th volume of "Cyc," Impeachment Proceedings, page 1414 (reading): "Impeachment proceedings are regarded by the courts as criminal proceedings, and if provided for in the Constitution are to be governed by any constitutional provisions which regulate criminal proceedings." The citations under that are, the Buckley case, in the 54th Alabama, the Hastings case, from which I read a moment ago, from the 37th Nebraska. The Buckley case, in the 54th Alabama, is an exceedingly well considered case. I will read from the syllabus—the decision bears it out: "Impeachment under our Constitution is a criminal prosecution; but not one in which the accused has a constitutional right to a jury trial." That is because of the provision in the Constitution that he is to be tried by the Senate. There is a reference in nearly all of those decisions to the 6th volume of the American Law Register, in which there is probably one of the most thorough discussions of the subject in an entire chapter of trial by impeachment that is nowhere else to be found in all of our literature.

General Crane: The page?

Mr. Hanger: Page 257: (Reading): "The text writers and leading jurists are of the same opinion." "The Court in general relies with close dependence upon the opinion of the common law judges of the law of crime and criminal evidence, often exacting their continuous attendance to the detriment of other public business,"—I only read that, not because it applied, but because it is—well, "The text writers and leading jurists are of the same opinion. The trial differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevail. For impeachments are not framed to alter the law, but carry it into more effectual execution where it might be obstructed by the influence of two powerful delinquents are not easily discerned in the courts of ordinary jurisdiction by reason of the peculiar quality of the alleged crime. The judgment thereof is to be such as is warranted by legal principles or precedents. * * * The proceedings are conducted substantially as they are upon common judicial trials as to the admission or rejection of testimony, the examination and cross-examination of witnesses, and the legal doctrines as to crimes and misdemeanors."

Mr. Hanger: The 60th Southern Reporter—62nd that is, General; I told you 60th, it is the 62nd; it is another Alabama case.

General Crane: What page?

Mr. Hanger: Page 189. (Reading.) "Impeachment proceedings are highly penal in their nature, and governed by rules of law applicable to criminal causes, so that provisions of statute and of the Constitution on the subject of procedure therein are to be construed strictly."

I call your attention, Mr. President, in addition to what has already been read to you from the Constitution of our State, to Section 16 of Article 4. It is contended here with seriousness by these gentlemen that the rule is different in this state to what it is in the others, that this unanimity of opinion and judicial construction by the courts of all the other states of this Union that impeachment trials are criminal actions, does not obtain in this state—in addition to what we have already read to this court, I desire to read this section 16 (reading): "There shall also be a Lieutenant-Governor, who shall be chosen at every election for Governor, by the same electors, in the same manner, continue in office for the same time, and possess the same qualifications. The electors shall distinguish for whom they vote as Governor and for whom as Lieutenant-Governor. The Lieutenant-Governor shall, by virtue of his office, be President of the Senate, and shall have, when in committee of the whole, a right to debate and vote on all questions; and, when the Senate is equally divided, to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the Governor to serve, or of his impeachment or absence from the State, the Lieutenant-Governor shall exercise the powers and authority appertaining to the office of Governor until another be chosen at the periodical election, and be duly qualified, or until the Governor, impeached, absent or disabled, shall

be acquitted, return, or his disability be removed."

I undertake to say, Mr. President, and members of this Court, that if it was not regarded as a criminal action and proceeding and accusation, this Constitution would never have employed the term "until he is acquitted." Clearly outside of and beyond all this unanimity of decision to which we have referred, clearly beyond the holding of every court, so far as we can find, in all the states throughout this Union, clearly beyond the belief and opinion and judgment and decision of the text-writers upon the subject, that it is a criminal action, if we may discard for the benefit of the contention of these gentlemen and to satisfy their purposes in this contention, if we may discard the opinion of Kent, of Story, and Bishop, and Blackstone, and declare that they were ignorant of what sort of proceeding this really is—if we can do that, we come to this constitutional provision again and find that it is regarded by the framers of our Constitution as a criminal action, as a criminal accusation even, and if he goes—and if they are not found to be true, then he is acquitted, in the language and in the term of this Section 16 of Article IV.

Now, they have said that he is just a party, that the protection thrown around a witness by this article, if they had known of its existence the other day, would have at first admitted this testimony or refused admission to this testimony, that by the language of Article 5517 the protection does not extend to a party, but only to a witness. I call the attention of counsel and the Court to the case of State vs. Pfefferle, in the 12th Pacific Reporter (reading): "Where a defendant in a criminal case"—

General Crane: What page, please?

Mr. Hanger: 406 (continuing reading): "Where a defendant in a criminal case takes the witness stand to testify in his own behalf, he assumes the character of a witness, and is entitled to the same privileges, and subject to the same treatment, and to be contradicted, discredited, or impeached, the same as any other witness."

I call attention to 40th Cyc., page 2414 (reading): "A party to a civil action or a defendant in a criminal prosecution who testifies in his own behalf stands upon the same footing as any other witness, both as to the admissibility of the testimony, the methods of examination and cross examination, and the privileges which he may claim."

The next is the 88th Northeastern Reporter, page 21—the case of Gude (G-u-d-e, Mr. Stenographer) vs. Murphy, Building Superintendent (reading):

"The party called in his own behalf does not testify as a party, but as a witness."—. "A party called in his own behalf"—pardon me for re-reading. I think it will bear re-reading to these gentlemen—"does not testify as a party, but as a witness; and the rules of evidence, both as to admissibility and methods of examination and cross-examination, apply to him in precisely the same way as to a witness who is not a party."

I have read from the syllabus. The opinion bears out the syllabus fully. I am only reading from the syllabus, in order—88th Northeastern, somebody is asking, I didn't catch who it was; I heard somebody asking.

I had one more citation that I desired to read from, but it seems that I left in the Library.

We again call attention to the two provisions of the Constitution referred to the other day:

The first is section 10 of Article 1, which reads as follows:

"In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He snall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel, or both, shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger."

That is a somewhat involved sen-

tence, but robbed of the confusion —leaving out that which does not apply, it would read this way:

"And no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except * * * in cases of impeachment." "For a criminal offense, unless on indictment of a grand jury, except * * * in cases of impeachment."

Now, then, of course, there is other language in between there; I am not attempting to read it just as it follows, but I say, leaving out the other language which does not apply here, that is the way the sentence would read as applicable to the question of impeachment.

Now, again, in Section 11 (reading): "In all criminal cases, except treason and impeachment"—

General Crane: Is that the same Article?

Mr. Hanger: No, sir. Section 11 of Article IV. (Continuing reading):

"In all criminal cases, except treason and impeachment, he shall have power (referring to the Governor), after conviction, to grant reprieves, commutations of punishment, and pardons;" . . . "In all criminal cases, except treason and impeachment" . . . If anything could be written stronger, more forcibly than Section 11 of Article IV, and Section 10 of Article I, in both of which the express language is used, "In all criminal cases except impeachment," and again following that up, to make just as manifest as language can make anything certain and manifest, in the other Article if the Governor is acquitted of the impeachment—he could not be acquitted in a civil case; but even stronger than that, that is not so strong an indictment of the belief of the framers of the Constitution and their view of what sort of a transaction and action and proceeding this is, because in these other two separate provisions of the Constitution just read they say in language that cannot be mistaken, I most respectfully submit, that, *in all criminal cases except impeachment*—that is in effect, that is absolutely saying that it is a criminal case.

We submit, on these authorities, this question to your Honor.

The Chair: Does any other counsel for Respondent desire to be heard?

Mr. Henry: Mr. President, just one or two suggestions. I do not want to trespass—

Mr. Hanger (To Mr. Henry): Take the close. (Addressing the Chair): Having made the objection, why, Mr. Henry will answer the argument of counsel on the opposite side and close.

The Chair: I believe that is proper.

Mr. Hanger: Yes, sir.

General Crane: Mr. President, my admission this morning in opening the argument was really broader than sustained by the authorities produced by opposing counsel. I will call your Honor's attention to the fact that those authorities, few of them say that this is a criminal case, but they say that the rules of evidence applicable to criminal cases apply herein. Now, the Alabama courts, I think, clearly announce that an impeachment is a criminal proceeding, and Mr. Story, in writing his book on constitutional law, based his theory that it was a criminal proceeding upon the fact that there were common law offenses against the laws of the United States. As a matter of course, there are none. Again, in this Nebraska case which was read, your Honor will note that they are not confined, as we are, in the trial of criminal cases to defined crimes; but, "Where in an impeachment proceeding the act of official delinquency consists in the violation of some positive provisions of the Constitution or statute which is denounced as a crime or misdemeanor, or where it is a mere neglect of duty wilfully done with a corrupt intention, or where the negligence is so gross and the disregard of duty so flagrant as to warrant the inference that it was willful and corrupt, it is a misdemeanor in office within the meaning of Section 5, Article 5, of the Constitution."

Well, now, Your Honor knows that in Texas no man can be tried for a crime of any kind or character unless it is defined by the statute and the penalty thereto affixed, and, therefore, it would be a travesty on common justice to say that an impeachment proceeding is a criminal proceeding, when at the same time the acts, many of which are relied on, are not contrary to the positive law, perhaps, but may be or may not be. Anything that renders an officer unfit for office is sufficient to be made the basis of an impeachment proceeding, and in the face of the Texas statute which says that no criminal proceeding can ever be brought unless there is a positive statute defining the crime and assessing the punishment therefor. I con-

cede what Cyc. says in the same way. And, now, Your Honor, on the Alabama case—the Alabama case that I called Your Honor's attention to in opening, that is the law in Alabama, and they do so hold. The American Law Register—6th American Law Register, is simply an article written by a lawyer, whom I do not know, he may have been a good lawyer or a poor one, it doesn't matter, but at any rate, as I am calling Your Honor's attention to it, it is not authority, it is simply a statement; and yet those statements do not go to the extent of calling it a criminal case, but say that the rules of evidence as to the quantum of proof that are applicable in criminal cases apply here. Now, if the Court please, I would be perfectly willing to apply all of the rules in criminal cases as to the quantum of proof here that are applied in ordinary criminal cases, and that is, I would not ask to have a single statement of Governor Ferguson admitted that he made over in the House before the Committee of the Whole, except it be such statement as if he had an examining trial before a Justice of the Peace, it would not likewise be admissible against him on indictment. They are not wanting to apply the ordinary rules of a criminal case here, but are asking for a special application, they are asking this Court, the Senate of the State of Texas, to say that a poor fellow tried in the criminal court who has had an examining trial, and if he has been before the grand jury, if he is to be tried in the criminal courts, every statement that he made in the examining trial, every statement that he made before the grand jury was admissible against him. For what purpose? To convict him. But, forsooth, because a man holds an office he is covered over with some sort of privilege, he can make any kind of a statement in his examining trial, the impeachment comes and he is immune. For what reason? Simply because he holds an office. Mr. President, that is contrary not only to the rules of evidence and to the rules of law in Texas, but it is contrary to the principles upon which this government is founded, that because a man clothed with an office is to be tried for a certain criminal course, if you call it criminal in an impeachment proceeding, if he has made a statement in his examining trial, because he is an officer it cannot be admitted against him; but a private citizen, when he makes a statement, it can confront him. I thought, Mr. President, that in this country all men were free and equal, that equal and exact justice was meted out to every man, and special privileges would be claimed by no man. I want Governor Ferguson to have every protection that any other citizen of Texas can have; I would not deny him any of that. But I deny to Governor Ferguson, or any other official in this State, any protection under the administration of the laws of this State that will not be given to the humblest citizen in this land.

Senator Page: Mr. President, I would like to suggest to General Crane, if he will permit me.

General Crane: Certainly.

Senator Page: That I would like to hear him on this proposition, before he finishes that Section 10 of Article I, referred to by both General Crane and Senator Hanger, says that "no person shall be held to answer for a criminal offense"—this is as to whether this is a criminal action or not.

General Crane: Yes, sir.

Senator Page: "Unless on indictment of a grand jury except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment." Now, then, why the language in this Constitution unless the framers of the Constitution denominated this, General, a criminal offense, which says that "no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment." I just—that proposition bothers me a little bit.

General Crane: Somebody get our copy of the Constitution.

Senator Page: Article 10 of Section 1, it is there.

General Crane: Article 10, Section 1?

Mr. Hanger: Yes, sir.

General Crane: Article 10 of Section 1?

The Chair: It is Section 10 of Article 1.

General Crane: Oh, Section 10

of Article 1. Now, I will get it. Now, to get this in the proper connection, responding to the Senator from Bastrop, I will say: "In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel or both, shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger."

Now, my idea about that has always been that the Constitutional Convention did not intend to define crimes in that section, but they did mean to say that no person should be held to answer for a crime or a charge of any kind unless presented by a grand jury, except of the kind mentioned; that in those cases no indictments were necessary, but now, Senator, I construe that in connection with Section 10 of—Section 16, 8 and 16, of Article V, as I believe it is a fair construction to take all of the provisions on the same subject together. Article (Section) 8 says that, "The District Court shall have original jurisdiction in all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct."

Now, Senator, I make this proposition, that if this is a criminal offense —and that is the one with which Section 10 was dealing—if it is a criminal offense, if it is a felony, then this Senate has no control of it, because a special provision of the Constitution gives that to the District Court. If it is a misdemeanor constituting official misconduct—if that is what we are trying the Governor for, then the District Court has jurisdiction of that. And I take it, therefore, that when all crimes are divided into felonies and misdemeanors, that the Constitution going on to define them, that then the courts that try only those crimes are the only criminal courts we have; and whatever may be the other expressions in the statute, when the convention came to deal with this one question of the division of offenses and of their definition, they divided them into felonies and misdemeanors, and placed the jurisdiction in the particular tribunals to try them. Other misdemeanors not classified here, as the Senator knows, are triable either in the County Court or the Justice Court.

Now, I am not speaking now alone here; I would not presume even to ask the Senate to take up my personal views, perhaps, as against the views of some distinguished law writer, even though he be not a judge, but here is what Judge Gaines says—one of the most accomplished lawyers who ever graced the bench at any time. He says: "It is due to the Court of Civil Appeals to say that they probably felt constrained to dismiss the appeal by reason of the ruling in the case of The State vs. Tunstall." Then, passing over what he said there. "But it seems to us that that ruling is based upon the language of the old statute, which was repealed by the Revised Statutes now in force. If it be admitted that the Legislature had the power to treat as a criminal case one which is essentially civil in its nature, and thereby deprive the Supreme Court, as it then existed, of a jurisdiction conferred by the Constitution, it is clear to our minds that in enacting the provision of the Revised Statutes upon this matter they intended to do no such thing. The mere facts that the proceeding is to be conducted in the name of the State, and that the statute uses the language, if 'the attorney be found guilty,' do not evidence such intention."

Now, I would say to distinguished counsel on the other side, Senator Hanger, that an acquittal means nothing in that clause of the Constitution, because the Supreme Court says that the use of the term, in trying lawyers, that the attorney shall be found guilty is not even of any significance. "On the contrary"—now listen to this, this is the Supreme Court of Texas, the highest tribunal in this State, and the one authorized to interpret both its Constitution and its statutes,—"On the contrary, the Revised Penal Code and Code of Criminal Procedure, which

were passed at the same session of the Legislature, expressly declare, that it was the purpose of the Legislature in the one to define every offense against the laws of the State, and in the other to make rules of procedure in respect to the punishment of offenses intelligible to the officers of the State and to the persons to be affected by them." Now, "The one does not define the acts for which an attorney may be disbarred." I state again, the Penal Code—paraphrasing Judge Gaines' elegant English, the Penal Code does not define the acts for which the Governor may be impeached. "The statutory regulations in regard to the proceedings for disbarment are embodied, as we have seen, in the Revised Civil Statutes, and we think that they were appropriately incorporated in that body of laws." I say, paraphrasing that again, that all of the acts in reference to impeachment are properly embodied in the civil code of this State, and not in the Code of Criminal Procedure.

Now, you not only have the judgment of the Legislature expressed in that Penal Code and that Code of Criminal Procedure as to what is a crime and what is not, but you have the Supreme Court of the State, composed of not only one learned Judge, but of three learned Judges, declaring by an undivided opinion that they thought that was a proper decision; and at that time, I call your attention to the fact that Honorable John W. Stayton was Chief Justice and Honorable R. R. Gaines and Honorable T. J. Brown were the Associate Justices. There was no dissenting opinion in that. Now, I am not asking, therefore, that this Senate as a Court follow what I say; I am not asking that they disregard what opposing counsel say; but I am asking that they accept the settled construction, which has never been questioned, of the Supreme Court of this State—and I do not mean to call in question the ability of any men there now or who were ever there—but I say that when three of the ablest men who ever sat upon it occupied positions then that are held by others now.

Now, I want, before getting away from that, to remind counsel that "Not guilty" is not an unsual plea in a civil case. I remind distinguished counsel on the other side that in every suit in trespass to try title "Not guilty" is the first plea of the defendant. I also remind them that in the little justice of the peace proceedings known as forcible entry and detainer "Not guilty" is the statutory plea, and when a man pleads not guilty it is not understood that he is not guilty of a crime, that is not it, because he has not been charged with one, but he is not guilty of trespassing upon that property; he is there as a matter of right. Therefore, when we say that a Governor or an officer is found not guilty it does not mean he is not guilty of a crime, but he is not guilty of the charges against him, and he ought not to be impeached. Now, it is but fair to remind you that, as the Penal Code has said, the opening Article of it—for fear I misquote it, have some of you gentlemen got the Penal Code? Now, they say—the Legislature, this is its language: "The design of enacting this code is to define in plain language—in plain language"—what? "every offense against the laws of this State and to affix to each offense its proper punishment." Now, everybody knows we have no common law offences in this country, and this code states every one of them. Now, when they defined the offenses, as I pointed out to you before, the Constitution fixed the courts in which those offenses must be tried. Again, it is well known that it is the settled policy of this State, as it is of the Nation, that no man can be tried twice for the same offense; and yet you can impeach a Governor here and you can oust him from office and he may be indicted by a grand jury of this State for the same offense—that is, for the same acts that are embodied in the impeachment articles—and the judgment in the impeachment court is no bar. You may do the same thing if he is acquitted. That is another sort of proposition. Now, the code adds further: "All penalties must be affixed by written law—in order that the system of penal law in force in this State may be complete within itself, and that no system of foreign laws, written or unwritten, may be appealed to, it is declared that no person shall be punished for any act or omission unless the same is made a penal offense, and a penalty is affixed thereto by the written law of this State."

Mr. President, indulge me a moment, please.

General Crane: Now, here again, coming to this Section 11 of Article 4, I can give you my construction of that, which I believe is a fair one. "In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, to grant reprieves, commutations of punishment, and pardons; and, under such rules as the Legislature may prescribe, he shall have power to remit fines and forfeitures. With the advice and consent of the Senate, he may grant pardons in cases of treason; and to this end he may respite a sentence therefor until the close of the succeeding session of the Legislature; provided, that in all cases of remissions of fines and forfeitures, or grants of reprieve, commutation of punishments or pardon, he shall file in the office of the Secretary of State his reasons therefor." My theory about this has always been that the Constitutional Convention intended to guard the people against the pardoning of people who had committed treason, and they also intended not to give any man the power to relieve an officer impeached of the burdens that have been put upon him; that that was a matter they did not propose to lodge in executive hands. Now, you see, it is not all criminal matters involved in that, because judgments that are purely civil in their nature have been remitted, when they are called forfeitures of bail bonds—I believe the statute may in some instances call that a criminal proceeding, but at any rate I believe there is some evidence of a remission of that sort, the power to do which was not questioned. But those references to impeachment being a crime in those passing sections of the Constitution are fully met when you come to where the Constitution lodges the power to try, not some offenses, not just a few offenses, but all offenses—lodges the power to try all offenses in the district court or the county court or the justice court, and then leaves the Legislature to give the definition of those crimes, and this Legislature has declared and the law is that no man can be tried for a crime until it is defined by this body and appropriate punishment affixed thereto.

Now, I have taken all the time of the body on that subject. I now again repeat my former statements about this statute. Senators, I am serious about that, and I believe that if you will give it proper consideration you will reach the same conclusion.

Senator Bee: Mr. President.

The Chair: Senator Bee.

Senator Bee: General, will you read us that statute again—as you proceed to discuss it?

General Crane: Yes, sir. That is just what I was preparing to do, Senator. It is 5517. Now, this statute—now, mark you, the burden is not on us. That Governor Ferguson's statements can be introduced in this case unless prohibited by this statute is certain. Now, their contention is that this statute prohibits us from introducing it, and here is its language: "In the investigation of any public officer elected by the Legislature, or the qualified voters of the State of Texas or of any nominee of any political party in said State for election by the Legislature, or qualified voters thereof, to any public office in respect to matters or charges that reflect upon the personal or official integrity of such public officer or nominee, or that disqualifies, or tends to disqualify, such public officer to hold the office to which he has been elected or nominated by any political party, or any investigation of any other matter, or for any other purpose that may be ordered by the Legislature of this State, or either house of such Legislature, before any committee heretofore appointed by the Legislature of this State, or by either house of said Legislature, and now pending, or before any committee that may hereafter be appointed by the Legislature of this State, or either house thereof, at this or any subsequent session, such investigating committee"—now, here is where they begin: "Such investigating committee and each member thereof, shall have full power and authority to administer oaths to officers, clerks and stenographers that it may employ in connection with the performance of its duties, and to any witnesses and parties called to testify before it;"—now, that is the only time that parties are mentioned; "and said investigating committee shall have full power and authority to issue any and all process that may be necessary to compel the attendance of witnesses and the production of any books, papers and other written documents it may designate." Now, I submit, Sen-

ators, that that clause does not refer to parties. I submit that that would not always compel the attendance of a defendant, to submit a party and put him on the witness stand under this statute, to submit matters that would incriminate him, I don't believe anybody has ever contended that they could; they might compel him to give some testimony about some matters that would not tend to incriminate him; that perhaps would be an open question, but to compel him to bring books and papers and give testimony that would incriminate him is contrary to the spirit and genius of the Civil and Criminal Statutes of this State. Now, that is where he is to be protected,—"and to compel any witness to testify in respect to any matter or charge by it being investigated"—not a party—"in answer to all pertinent questions propounded by it, or under its direction, and to fine or imprison any witness for his failure or refusal to obey the process served on him by such committee, or to answer any such pertinent questions propounded; provided, that such fine shall not exceed one hundred dollars, nor shall imprisonment extend beyond the date of adjournment of the Legislature then in session; and provided, further, that the testimony given":—by whom? By a witness, not a party—"given by a witness before such investigating committee shall not be used against him in any criminal action or proceeding. nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury committed before such committee." Now, Mr. President and Senators, I beg to say that that language itself indicates what was meant; that perhaps by the production of books and papers by the witness or some statements he might make he might subject himself to a criminal prosecution before some criminal court, and it was deemed proper that he should be therein protected. Now, let me call your attention, Senator, to this one further fact: It is not supposed that witnesses called before an investigating committee when they are investigating somebody else are going to be charged with impeachment; that is not in the contemplation of the parties. Why, suppose that in this investigating committee over here—we had witneses from all parts of the country; they would come there with full knowledge that we were not expecting to impeach them; they needed no protection on that point. But perhaps some one of them had been guilty of something that would have been an infraction of the penal laws of the State of Texas and some criminal prosecution might be begun against them somewhere for some of the acts they disclosed. Now, the statute says: "Now, Mr. Witness, you may rest perfectly secure in this. The State is interested in getting all these facts against the man we are investigating. You cannot be punished for anything but one, and this is for failure to tell the truth before the Committee. If you do that, you may be indicted for perjury; but no matter what other crime you may commit here, you are protected." That far it is a wise statute; it shows the Legislature had a wise and humane and patriotic purpose before it. But to so construe it that a defendant who takes the stand voluntarily and makes disclosures that may be against his interests, when that is the purpose of the investigation, is to find out about him, to say that those disclosures cannot be used in the impeachment proceeding, to institute which is perhaps the purpose of the investigation, is to say that the Legislature intended to say to the defendant, "You can make yourself absolutely immune here by testifying before the examining committee; you can say whatever you please, and you cannot be punished for any disclosure you make nor can the charges be supported by your testimony; it cannot be quoted against you again." Now, Senators, there is another view of that. The construction I am insisting on puts the Governor on the same basis that you or I would be on in the criminal courts if we happened to be indicted in the criminal court for treason and we had an examination before a magistrate. Why, on that charge of treason, where our lives may be the forfeit if they prove it, they can prove every statement we made voluntarily in the examining court. Then, let me ask you, do you think that the Legislature sought by this statute to prevent our using the declartions of the Governor, his deliberate statements made under oath on the witness stand, guided by his counsel, in an investigation—prevent our using them in order to protect the public, or rather in order to give this Senate a proper opportunity to judge of

the merits of the controversy between this Board of Managers and the Respondent? I take it, not—I take it, not. That was not the legislative purpose. I would acquit it of that; first, because it is unwise; second, because it establishes a sort of royalty in this government, that when a man holds an office and you seek to impeach him, the law throws around him a shield that does not protect any other citizen under any other circumstances. I do not believe that, Senators. I do not believe that was the purpose of the Legislature, and I do not believe that that language, properly construed, is susceptible of that meaning.

Now, just one moment, as to that Federal Statute, and I will have concluded. Where is that Congressional Record?

Senator Bee: Here it is.

General Crane: Thank you, Senator. Now, attention has been called to the distinction between the Federal Statute and our State Statute. I think it is ample. The Federal Statute applies to witnesses and does not name parties; and then, besides that, the Federal Statute, I doubt whether it was properly construed by the Senate, but even if had been properly construed, the point that I wish to make is that its language is essentially different from this, and then, as pointed out by Senator Bailey in his argument in the beginning of it, one section, 103, says that "No witness is privileged to refuse to testify to any fact, or to produce any paper respecting which he shall be examined by either House of Congress, or by any committe of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous." He could be compelled under that section of the statute to testify to any fact, however disagreeable, however infamous it might make him in the community; and yet they sought to protect him because of that. Now, those Senators thought even that did not apply, and here is the argument they make: "Plainly," says the Senator, pursuing this line of argument, which was likewise adopted by others, "the purpose of that statute was to enable the committees of either House, or either House itself, to compel the attendance and the testimony of any witness, and it provides, contrary to the rule of law obtaining in the courts, that the witness shall not be permitted to decline to testify upon the ground that it might disgrace him or tend to render him infamous. Having deprived him of the privilege which he would enjoy before the courts of this country, and having compelled him to testify before its committees, even to his own infamy or disgrace, Congress very wisely then provided that such testimony should not be adduced against him in any criminal proceeding in any court. But, Mr. President, this is not a criminal proceeding, and this, in my opinion, is not a court within the meaning of that statute. The Constitution may seem to contemplate that we shall sit as a court when we try the President, because it provides that the Chief Justice of the United States shall preside at such a trial. Whether that was intended, as has been suggested by some, to protect the President against the rulings of the Vice-President, who might succeed to the Presidency in the event of the President's conviction and removal, or whether it was intended, as has been suggested by others, to secure a more certain and a more correct interpretation of the law, I do not undertake at this time to decide. My own opinion is that the reason which prevailed upon the framers of the Constitution to provide that the Chief Justice shall preside over the Senate when it tries the President on impeachment charges was that the Vice-President might be suspected of having a deep and peculiar personal interest in the result of such a trial. But whether one or the other was the reason, it can not be successfully contended that this is a Court within the meaning of Section 859, or if it shall be held that this is a Court, then it can not be contended that this is a criminal proceeding within that section. The very provision of the Constitution under which we are proceeding negatives the idea that this is a criminal action, because it expressly provides that no matter what our judgment may be, it only excludes the incumbent against whom it may be pronounced from the honorable office which he holds, and it leaves to the ordinary administration of the criminal jurisprudence of the

country the punishment for his criminal acts." That argument is conclusive, to my mind. and it is certainly conclusive when construed in connection with the State statutes and the several provisions of the State Constitution.

Now, that, I believe, is all that I desire to say. I thank the Court and all of its members for the patient hearing they have given me, and I ask simply in behalf of the Board of Managers and the people of the State whom they represent that the sworn statements of Governor Ferguson, deliberately made before the Committee of the whole House, in the presence of his counsel and advised by them of his right at all times, given on direct examination and cross examination, so far as they may tend to elucidate the several propositions before this court, that we be permitted to introduce them in evidence so as to enable this Court to do absolute and prompt justice.

Mr. Harris: Mr. President, I want to make this suggestion to the Senators for their consideration on the matter of construction. Nothing is clearer than the Legislature has said in the Penal Code, we shall now define all criminal procedure; we shall define all criminal action. They might not have defined them all, but they have settled this definition. And the Legislature having said that, rightfully or wrongfully, when the Legislature comes along and uses the term criminal procedure, isn't it the rule of construction that you refer back to what their definition of what a criminal action is? They themselves have said, "We are now defining a criminal action," and they themselves having said it, when they used the term "criminal action," isn't it proper to say that the Legislature used it in the sense in which they repeatedly used it in the Criminal Code? I think so; I think that would be the proper construction, and I submit it now in order that Mr. Henry may answer it; the Legislature themselves having said that this was the definition of all criminal actions, and all criminal proceedings; when the Legislature therefore uses the term "criminal action," it is proper to assume that they used it in the sense in which they had previously used it. It is clear that the Legislature used that because they were then defining all criminal actions.

Mr. Henry: Mr. President.

The Chair: Mr. Henry.

Mr. Henry: With all due respect to the distinguished counsel for the Managers, General Crane, it will be necessary to separate some of his argument which was not argument, from the real logic of his remarks. The General is mistaken. We are not invoking any rule here that would give the Governor of Texas a privilege that should not be accorded to the humblest citizen of this land, of the smallest officer of this State.

Mr. President, in running back through all the impeachment trials, not only in the Senate of the United States, but in most of the States, as I have read them and recall them, it is a remarkable thing that is revealed, that most all of these impeachment cases were based on charges that were not statuable offenses, they were not defined by a statute, and yet officers, high and low, have been arraigned in the Senate of the United States, and in the Senates of other States and have been tried; yet, in this case, in these charges, there are some allegations that amount to charging the Governor with a felony, and so much more the reason why we should be careful in coming to a conclusion on this proposition. But the Governor is not invoking any right under that statute that has been read, that was enacted in 1907, that is not given to any other witness that has taken the stand, or that took the stand in the proceedings in the House. Now, one of the Senators this morning made a very wise suggestion to this body. if I may be permited to advert to that, because it will be of value to us in arriving at our conclusion. He said that we would do well to consult the Constitution and stay close to the Constitution in this trial—and no Senator has made or will make a more salutary remark than that in this proceeding.

Now, Mr. President and Senators, General Crane and his counsel have been driven to very great extremities in this trial. We have a right to comment on this spectacle and to analyze it. Under all of the laws of this land it is incumbent upon the Managers of the House to make out their case in this body beyond a reasonable doubt. It is the business

of the House of Representatives, through their Managers, to make out a clear case against the Governor, or any other officer who is impeached, and in the closing hours of their testimony, seemingly not being satisfied with what they have adduced here they seek refuge in going back to the House of Representatives and bringing testimony to this body as the admission of the Governor, which, in my judgment, the statute was intended to exclude.

Now, Mr. President, let us see what the Constitution really does say about this, and it has been read and re-read, and yet there were suggestions that have not been made in regard to it. In a very few words. Artcle 15 of Section 1, states: "The power of Impeachment shall be vested in the House of Representatives." The language is not as full and complete as the Constitution of the United States, which I will take up presently and refer to. because it draws a very clear line of distinction there and will throw light on the argument as we go along. Then it provides in Section 2 for the impeachment of the Governor, Lieutenant Governor, etc. Then we come down again to the question of the judgment that this body may render in impeachment trials, and in Section 4 of that Article we find this language: "Judgment in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust, or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial and punishment according to law." A party convicted. In civil proceedings is a judgment of conviction—it is a judgment of recovery, and those who framed the Constitution meant that if this Senate came to the conclusion that the case was made out by the Managers of the House. then a judgment of conviction should be made out as in criminal cases. I commend that to you, Mr President, and every member of this Honorable Court. and think it throws a flood of light on this proposition.

Now, let's go back for just a little while and see what the history of impeachment trials has been: When the delegates assembled in the Philadelphia Convention to write this Constitution of the United States the question of impeachment was reached and there were many delegates who contended that the forum for the trial of an impeachment case should be before a jury, and other delegates contended that the proper forum was before the Supreme Court of the United States. And there in that convention those two propositions were debated for days and days, and I think that you will find in reading Elliott's Debates giving the history of the discussion, that no delegate ever suggested that this was not a criminal action or proceeding. It seemed that there was a uniform and universal agreement on the one proposition that an impeachment trial was criminal in its nature. We will do well to adhere to the landmarks in the history of impeachment trials, and rules that have been laid down, and they cannot be stated and restated too often in order that we may make no mistake. Here is Story on the Constitution, one of the greatest expounders on that document that has ever written touching its provisions, and he concedes that an impeachment trial is criminal in its nature. Then he lays down these rules. and you will find them sustained by the courts everywhere, in every State of this Union, I will undertake to say, and by the Courts of England as well, and courts everywhere: "the same rules of evidence, the same legal notions of crimes and punishments prevail, for impeachments are not framed to alter the law, but to carry it into more effectual execution where it might be obstructed by too powerful delinquent or not easily discerned in the courts of ordinary jurisdiction by reason of the peculiar quality of the alleged crimes." That doctrine is laid down in the very clearest language, and I undertake to say that it has been adhered to for more than a hundred years and has never been overruled.

Now, Mr. President, when the framers of the Constitution of the United States and the State of Texas referred to the word "impeachment" they had in mind the rules of evidence and law, the interpretation that had been handed down to us by the common law, but here is the difference between the Constitution of the United States and our State Constitution, which will aid us in the interpretation of these provisions. In the Federal Constitution, Article 2, Section 4, I believe, "The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction" (using the same word) "of treason, bribery, and other high

crimes and misdemeanors." Our Constitution does not contain the words "or other high crimes or misdemeanors." Then we read further: "Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

The Article III, Section 3, provides: "The trial of all crimes, except cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State the trial shall be at such place or places as the Congress may by law have directed."

Now, Mr. President, on various occasions gentlemen have thought in the Senate of the United States, and in the House of Representatives, that these provisions of the Federal Constitution were not adequate in an impeachment trial, and they have undertaken to introduce, and have enacted a code of laws in regard to impeachment trials, but they have always been met by the unanswerable argument that the Congress of the United States can neither add to nor subtract from what is written in that Constitution, and therefore when the words "high crimes" and "misdemeanors" have been written into the Constitution of the United States the Congress of the United States has no right to say by their legislative action what shall constitute high crimes and misdemeanors; and then we are met with the proposition that if the American Congress should pass any such Act as that, that takes from or adds to this proposition of the Constitution which uses the expression "high crimes and misdemeanors" it would be an unconstitutional act. Then we are reminded of the common law, and when we go back to the common law there you will find in nearly one hundred cases tried in the English Parliament, what constitutes high crimes and misdemeanors. And so, I think I am safe in saying that all of the commentators on our Constitution and our laws have adhered to that doctrine as enunciated by Mr. Story.

Now, Mr. President, our Constitution has left out those words, but this Senate must interpret what constitutes high crimes and misdemeanors. Does the court now, from the language of the Constitution—they must say themselves just what constitutes an impeachable offense. Now are you going to say, will any Senator say that the Governor of the State is not entitled to the same privileges under that statute that has been read, and under this Constitution, as any other officer or citizen? In other words, will these gentlemen in their sad extremity here be allowed to bring the record from the House against the Constitution, against the written law on impeachment, the established law on impeachment for more than a hundred years and against that very statute that was written to protect any witness, will they be allowed to bring it here now and make out their case? The burden is on them, as I have said, they must clearly establish it, and not only that, if there is any doubt on this question it should be resolved in favor of the Respondent. But, how can there be any doubt in regard to this statute? The more General Crane read it the more he convinced me that we could not possibly be mistaken and that we are entitled to invoke its provisions.

Now let us refer again to the Swayne case: There is no need of hurrying, and I do not intend to detain you much longer. There was Judge Swayne, a Federal Judge from Florida, arraigned before the House of Representatives, and then his case was sent to the Judiciary Committee of the House and he appeared voluntarily and invited the Chairman of the Committee, who was at that time Mr. Jenkins of Wisconsin, to administer the oath to him. He made his statement, and afterwards the House preferred and exhibited articles of impeachment to the Senate, and when the managers got to the Senate of the United States they made out the best case they could, but it wasn't good enough, and then they undertook to bolster it up by offering the statement made by Judge Swayne before the House of Representatives, or its authorized committee, and that Senate discussed this question at

very great length, solemnly and advisedly, and notwithstanding the opinion and argument of the distinguished Senator from whom General Crane read, they determined that this kind of a case was criminal in its nature and that the managers had no right to bring this testimony there and offer it.

Now, I don't care about all the furbelows and frills, with all due respect to General Crane, that he reads in regard to that statute that he has read so freely from. This is the gist of the question:

Senator Hudspeth: Pardon me, Mr. Henry, what was the vote on that in the Senate?

Mr. Henry: I was coming to that right now. I will find it and answer it. The vote on that question, when the vote came, there were twenty-eight ayes in favor of it and forty-five nays against it. And if I may digress and go out of the record and may be so permitted in discussing this question, I want to say that during my experience in listening to these discussions, I never heard an abler or better discussion of any legal proposition than that one, and so impressed were some of the Senators with the position, like General Crane is here, that they were right, they raised the question the second time and the presiding officer again submitted it to the Senate and they decided that that testimony of Judge Swayne's was not admissible, and yet in that case he was not charged with the violation of any criminal statute. He was charged with violating a civil statute which provided that he should reside in the district of which he was a Federal District Judge, and the evidence showed that instead of residing in the State of Florida he resided in Guyencourt, Delaware, across the river from Philadelphia, and that was one of the grounds of impeachment, and you may run through all of the charges and there is nothing criminal in these charges. It was simply a charge that he was guilty of official misconduct, or official misbehavior, if you please, is the term of the Constitution of the United States. And yet the Senate said that although this Federal judge was charged only with misbehavior in office as a Federal judge, he was entitled to the protection of the Constitution, and those gentlemen who were the managers on the part of the House had no right to bring his admissions there and make out their case when they had failed. Now there is no use veneering the real question that we have before us. Something is wrong with this case somewhere or these gentlemen would not want this testimony. I think I have got a right to say that, because the Constitution gives us the right to say that it should not be admitted, and the Constitution was written to govern just such cases as this. So I think the statute—

The Chair: You say the Constitution gives you the right, what provision of the Constitution do you have in mind?

Mr. Henry: This provision of the Constitution, taken as a whole, that Mr. Hanger read, Section 10—those that we read in his argument.

Now, Mr. President, I want to take that Federal statute which was Section 859, of the Revised Statutes, which I believe was written before the State statute was enacted, and perhaps that Swayne trial had something to do with the enactment of the legislation here in Texas. "No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in the prosecution for perjury committed in giving such testimony." Governor Ferguson was a witness in the House. He was called as a witness there, he was sworn as a witness there, and he was cross-examined as a witness there under the same rules of evidence.

Now, let me have that State statute. You will have seen General Crane reads this statute, he always goes back and reads it—5517 is the article, goes back and reads it from the beginning, While the statute has special parts about the real essence of it, the question is here just as it was in this statute that I read: "and provided further," the concrete proposition—"that the testimony given by a witness—" just like a witness under the Federal statute, "given before such investigating committee shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony given by him, except for perjury committed before such committee."

Now, is it not a most extreme interpretation that the gentlemen undertakes to give to this statute when he tries to draw the distinction between a party who is a witness and a witness who is not a party. Parties can be witnesses in civil cases, they can be witnesses in criminal cases, and this statute was, I undertake to say, so written in the light of these former statutes and trials, with the view of covering just such cases as this. Now should not these gentlemen be compelled to reach their difficulty in some other way? That is for the Court to decide, it is not for this Respondent to determine for them. He stands only on his rights as written into the law. He does not ask that you add anything to the statutes, and he certainly does not believe that anything should be subtracted from them. Why talk about this not being a criminal proceeding, Mr. President, when all through every clause of the Constitution you read, the words "acquittal," and "conviction," and "crime" and "criminal proceedings" and in addition to seeking to take the high office away from the Respondent. Then the gentleman points to the fact that they could go further and the Respondent could be convicted.

Yes, here is one section I intended to read and I am glad my attention has been called to it. This is Section 3. "When the Senate is sitting as a court of impeachment the Senators shall be on oath, or affirmation, to impartially try the party impeached; and no person shall be convicted without the concurrence of two-thirds of the Senators present." After saying that this Court is to be sworn to try the party impeached, not the action, but to try the party, and upon conviction certain things shall be done.

General Crane: Mr. President, with permission of counsel, my attention has been called by some people here to the fact that the vote in the Swayne case was a partisan vote, and that nearly all of the voters on the minority were Democrats, with one exception among the minority, and all those voting in the negative, but five, were Republicans. Is that true?

Mr. Henry: I will state candidly, as far as I remember, at that time the Senate of the United States was Republican in their majority, but whether the analysis on the vote on the Federal impeachment charges are concerned or not, makes no difference, because on this vote, whether this was a criminal proceeding or not, party lines went to pieces.

General Crane: But I'm asking you there if that vote on that very question, if the vote in the negative wasn't practically a party vote, and if the vote in the affirmative was not likewise a party vote?

Mr. Henry: It may have been practically so, I do not recall, but will analyze it later. You read from the argument of the distinguished Senator from this State who voted it was not a criminal proceeding, but I say party lines did go to pieces and finally when the vote was cast the impeachment fell because those gentlemen were not allowed to bring that record from the House of Representatives there and bolster up their case; tnat it was not in the trial, and yet in a little while there the Senate of the United States, and for years afterwards, and there is a Senator sitting here on this floor who was a member of that body at that time that they impeached and put out of office a corrupt Federal Judge from the State of Pennsylvania, and party politics had nothing to do with the final judgment. I want to acquit the Senate of the United States of deciding the Swayne case, or the Achbold case, or any of those other cases where judges have been impeached, of partnership, when they made the case against them impeachable the Senate did its duty, and there were too few votes on the side of impeachability.

Now, Mr. President, I think I have touched upon about all the points I want to discuss, and we ask this Honorable Court to ponder long and well on these questions, for these proceedings will be read many a year from now and will be quoted in other impeachment trials, not only in the South, but in other States, and you are recording a precedent today, and it is not necessary for me to even suggest that everyone should do his duty, because I know they will, and after they have done all that and impartially tried the party in this case, I feel confident that we will be accorded our rights under the Constitution and the law.

The Chair: Does any member of

the Court desire to be heard on the law questions?

Senator Bee: Mr. President.

The Chair: Senator Bee.

Senator Bee: It occurs to me the motion of the Senator from DeWitt would probably be in order at this time. I understand the Senator from DeWitt filed a motion here that we retire for consultation. If that motion is agreed upon, why, then, I would like to discuss the matter with the Court here; otherwise in executive session.

Senator Bailey: Mr. President.

The Chair: Senator Bailey.

Senator Bailey: I am not going to speak to the motion. I am simply going to call it up and leave it to the Senate as to whether or not we discuss it among ourselves or in open session. I will call the motion up and ask for action on it.

The Chair: The motion is whether we shall retire to deliberate preparatory to the decision of whether the proposed evidence is permissible. Are you ready for the question?

Senator Hudspeth: I would like to have the resolution read.

The Chair: The Secretary will read the resolution.

(Thereupon, the Secretary again read the resolution offered by Senator Bailey.)

Senator Hudspeth: Does the Senator from DeWitt yield?

Senator Bailey: Yes, sir.

Senator Hudspeth: Do you mean by that that we go into executive session here in this Chamber?

Senator Bailey: Just as the Senate sees fit. We can retire to the Secretary's office if it is large enough.

Senator Hudspeth: I don't know whether the Secretary's office is large enough.

Senator Bailey: I rather think we would have to have it in the Senate Chamber on account of the weather.

Senator Caldwell: Does the Senator from DeWitt yield?

The Chair: Does the Senator from DeWitt yield to the Senator from Travis?

Senator Bailey: Yes, sir.

Senator Caldwell: Does your resolution provide that we shall decide it in executive session?

Senator Bailey: No, sir, but discuss it there and come back and vote in open session.

Senator McNealus: Mr. President.

The Chair: Does the Senator from DeWitt yield?

Senator Bailey: Yes, sir.

Senator McNealus: If it is adopted and we go into executive session as a Court, I want you to point out what obligation there is except a moral obligation to keep the secrets of that caucus secret?

Senator Bailey: Nothing, I take it.

Senator McNealus: Well, I will call attention to what will happen just as surely as the Senate adopts this resolution and proceeds as the Senator from DeWitt is asking us to do: There will be rumors around the Capitol, there will be rumors over the State and published in the press of the State about a lineup, when Senators get to discussing this matter among themselves, and someone will find out how each Senator has stated his views of the matter, and I think we should have no such thing happen. I feel sure that will be the result of the caucuses, and I don't believe it is good policy. If it wasn't for that, I don't believe there is any authority for it. I know that the Senate as a legislative body can have executive session, but the Court can not; there is no authority for it in the Constitution.

Senator Bailey: The rules we have adopted provide for the proceeding.

Senator McNealus: I have never seen a rule yet that is paramount to the Constitution; that goes farther than any rule.

Senator Hudspeth: Will the Senators from Dallas and DeWitt yield?

Senator McNealus: Yes, sir.

Senator Bailey: Yes, sir.

Senator Hudspeth: Don't you believe if every Senator goes into that caucus and gives his word that he will not reveal it, don't you believe it will not be revealed?

Senator McNealus: If you don't go into a caucus there will be nothing to reveal. I don't believe it is right to the people of the State to deliberate over any of the proceedings up to the time the evidence is all in— don't believe it is right to do it anywhere except in the open. I am willing for everything I do or say to be known to the public, and I believe every other Senator ought to feel the same way. Just as surely as the caucus is held, or what is termed an executive session, you mark what I tell you, gentlemen, there will be rumors and talk about a line-up, about how this is going to come out, and all that. I recall

a little incident that happened in the House proceedings when they published the line-up.

Senator Hudspeth: How will that affect the final result, even if there are a few rumors?

Senator McNealus: It can do the Senate as a judicial body no good to have that kind of reports circulated against it. Anyhow, I don't think it is right or justified. The Constitution allows us as a legislative body to go into executive session, but nowhere in the provisions for judicial proceedings covering impeachment can you find anything authorizing the judicial body to go into executive session.

Senator Henderson: Mr. President.

The Chair: Senator Henderson.

Senator Henderson: I would like for the Secretary to read the rule adopted providing for executive session.

Senator McNealus: I admit the existence of the rule.

Senator Henderson: I don't know whether it is there myself, and would like to have it read, if the Senator from Dallas does not object. Then we will know just what the rule is. I myself don't remember it.

Senator Lattimore: Mr. President.

The Chair: The Senator from Tarrant.

Senator Lattimore: I want to call the attention of the Senator from DeWitt, if I may have his attention—

The Chair: Does the Senator from DeWitt yield to the Senator from Tarrant?

Senator Bailey: Yes, sir.

Senator Lattimore: I want to state to the Senator from DeWitt before we vote on this, that Rule 20, which is the one, I suppose, under which he makes his motion, provides that the Senate shall retire or may retire upon motion and deliberate and come to a conclusion in its retirement and merely return and announce that conclusion. As I understand the rules adopted by the Senate, we may retire at any time to some place set apart and debate among ourselves, if we want to, and come to a conclusion there—not come back here and vote, but vote there—merely come back and announce the result of the vote.

Senator Bailey: I think that can be done.

Senator Bee: Does the Senator yield?

Senator Bailey: Yes, sir.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: I am of the impression—I don't turn to it at this moment—that there is somewhere a provision that the proceedings of impeachment trials shall be in the open Senate; in other words, that the doors of the Senate shall be open.

The Chair: If the Senator from Bexar will yield to the Chair, we will have Rule 18 and Rule 20 read.

Senator Bee: I wanted to ask the Senator from DeWitt if he knew of any other rule?

Senator Bailey: I was looking for the rule.

The Chair: We will have the two rules read.

Senator Hudspeth: If the Chair will bear with me, I want to state to the Senator from Bexar that in the Thirtieth Senate you will find that in debating a certain bill here the Senate did go into executive session for the purpose of debating that bill—as a legislative matter, but it was a bill. It came before the Senate, and on the motion of the Senator from Hunt, who is now Attorney General of the State, the Senate went into executive session for one day.

Senator McNealus: Does the Senator yield?

Senator Hudspeth: Yes, sir.

Senator McNealus: Don't you make a distinction between the Senate as a Senate and as a Court?

Senator Hudspeth: Yes, sir, there is a distinction.

Senator McNealus: The Constitution gives us authority to hold executive sessions on legislative matters.

Senator Hudspeth: As I recall the constitutional provision, it is in regard to appointments by the Governor, but it does not apply to bills that come before that body. I stated that we did at one time, I think, under Governor Neal presiding, go into executive session for the purpose of considering a bill by the Senator from Hunt, who is now Attorney General.

Senator Henderson: Mr. President, shall we have the rules read?

The Chair: Read the two rules, Mr. Secretary.

The Secretary: Rule 18, page 72 of the Journal of the Second Called Session: "At all times while the Senate is sitting upon the trial the doors of the Senate shall be kept open, unless the Court shall direct the doors to be closed while deliberating on the decisions." Rule 20: "The Court may at any time upon motion, without division and without debate, retire to its consultation room for deliberation, return to the Senate Chamber, and announce its decision."

The Chair: The question is on the resolution—

Senator McNealus (interrupting): Mr. President, legislative information, or rather judicial information: The arguments that counsel on the opposing sides submitted to the Chair, ought not that question to be decided by the Chair before this matter is taken up, Mr. President?

The Chair: The Chair could submit the question to the Court in the first instance, if the Chair desires. Under the rule, it is proper, in the opinion of the Chair, for the Court, if it so desires, to retire.

Senator McNealus: I would rather do my part in the open here than to go into a caucus or executive session. I am ready to vote on the proposition here, without consultation. If others want to do it, it is not for me to say they shall not, but I do not think it is the part of wisdom to do it. I think the Chair ought to decide—before the resolution is acted upon—should render his decision on the controversy between counsel.

Senator Hall: Mr. President.

The Chair: The Senator from Wharton.

Senator Hall: The Senator from Dalias made the very point I wanted to make, on a point of order—that is, before we can debate this resolution I think the Chair should rule upon this question; then, under the rule of procedure, why, then we might appeal from the Chair's ruling or we might decide to go into the Chamber and discuss the matter, and I want to raise that point of order, that the first proposition is that the Chair should rule upon the proposition now.

The Chair: The Chair will read Rule 14: "The presiding officer, on the trial, may rule on all questions of evidence and incidental questions, observing the established rules of evidence in this State as near as applicable, which ruling shall stand as the judgment of the Court, unless some member thereof shall ask that such question be decided by a vote of the Court, in which case it shall be submitted to the Court for decision; or he may at his option, in the first instance, submit any such question to a vote of the Court. Upon all such questions the vote shall be without a division."

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: It occurs to me that under that rule the Chair has the privilege at this time of deciding this question without reference to the motion of the Senator from DeWitt, and an appeal could be taken from it, or the Chair can submit to the Senate the question for its decision, and then the motion of the Senator from DeWitt would become applicable before we reach a decision on the subject—answering the point of order.

The Chair: The Chair is of the opinion that the point of order is well taken, but the Chair feels this way about it: If this Court wants to decide the question itself—the Chair is prepared to rule, but if the Court wants to decide it in the first place the Chair is willing for it to decide it.

Senator Bee: It is a question for the Chair whether you submit it to us or decide it yourself. I believe it is optional with the Chair.

The Chair: I believe that is true. The point of order will be sustained.

Senator Hudspeth: Mr. President.

The Chair: The Senator from El Paso.

Senator Hudspeth: I make a motion that the Chair rule on the question.

Senator Bailey: Will the Senator from El Paso speak a little more distinctly?

Senator Hudspeth: I make a motion that the question be decided by the Chair.

Senator Henderson: I make the point of order that that motion is out of order.

The Chair: The motion is out of order. The Chair feels like ordinarily the Chair should decide questions like this and ought not to

escape the responsibility or try to do it in this particular case. The Chair has reached a conclusion, and wants every member of the Court to understand that he will be glad if members of the Court are not satisfied with that conclusion to appeal from the Chair or ask under Rule 14 that the matter be decided by the Senate. Under the provisions of Rule 14, any member can have the question decided by the Court if not satisfied with the decision of the Chair. Having made that preliminary statement—

Senator Bee: (Interrupting) Do I understand under that rule it is not necessary to appeal from the Chair's decision?

The Chair: No, it is not necessary to appeal. As I understand Rule 14—

Senator Bee: You decide the question and then any member of the Senate can argue it. It does not constitute overruling the Chair?

The Chair: That is my impression. That was my view the other day, but somebody made the point of order that it was really an appeal from the decision of the Chair, and the Chair not being entirely familiar with Rule 14, treated it as an appeal and put it to the Court that way.

Senator Hudspeth: Mr. President, if after the Chair's decision, some member should ask the Court to decide it, wouldn't it be in effect an appeal?

The Chair: The rules treat it as an appeal, but in fact it would not be an appeal. The question in that case would be: Shall the objection be sustained or the evidence admitted? Gentlemen, I want to state at some length, though not at great length, the reasons upon which the Presiding Officer bases the conclusion which he has reached in this case. It is a question of considerable difficulty. it is a question of great importance, both to the Managers of the House and to the Respondent. When the question was approached the other day and discussed at considerable length by counsel the Chair undertook thereafter and has since then devoted all the time possible to a consideration of the merits of the objection made by counsel. The first question to be decided in determining whether the evidence should be admitted is: Is this a criminal case or proceeding? The weight of authority in the United States and elsewhere, so far as the Chair has been able to judge, is that an impeachment proceeding is a criminal proceeding. That evidently was the conviction upon which the Senate of the United States based its action in the Swayne case. Yet, in the opinion of the Chair, an impeachment proceeding in the Senate of the United States could well be considered a criminal proceeding, and yet not so under the Constitution of Texas, for the Constitution of the United States, Section 4 of Article 2, provides that the officers therein named may be impeached for treason and for other offenses named and "other high crimes and misdemeanors," which are criminal offenses, and that language would exclude the authority of the Senate of the United States to convict the officers therein named for any offense not criminal —at least, that is the present conclusion of this Presiding Officer. The difference is that the Texas Constitution does not prescribe or undertake to prescribe the character of offense for which impeachment may be ordered by the House of Representatives or which might subject the respondent to conviction in the Senate. All of the authorities, however, so far as the Chair has had access to them and so far as they have been cited and commented on by counsel here, treat impeachment proceedings, as respects the rules of evidence and the weight to be given to the testimony and the quantum of testimony required for conviction, as criminal in their nature. The opinion of the Chair is that the weight of authority, then, is that it is a criminal action, but under the Texas proceedings—under the Texas Constitution the Chair is of the opinion that it is what would probably be termed a quasi-criminal action. It is not a criminal action as contemplated by Article 4 of the Constitution, because in Section 8 of Article 4 and in Section 16 of Article 4 the framers of the Constitution undertook to define all crimes: they divided them in two; they did not undertake to define— they did, however, undertake to prescribe the jurisdiction for the trial of all crimes, felonies and misdemeanors. They did not in those two sections of Article 4 undertake to prescribe a forum for the trial of

impeachment cases. There is language in several sections of the Constitution which would indicate that the framers of the Constitution had in mind that an impeachment case was a criminal case. But, however it may be treated in the Constitution, the Presiding Officer is of the opinion that the members of the Thirtieth Legislature in the enactment of Article 5517 probably had in mind, when the term "criminal action or criminal proceeding" was used in that Article, such criminal case or proceeding as was contemplated by our Penal Code and Code of Criminal Procedure. If they had that in mind, then impeachment was not in the minds of the members of the Legislature who enacted and voted for Article 5517, because Article 1 of that Code expressly provides that nothing shall be a crime except such as is defined in plain language and denominated a crime: and it is a fair construction of the provisions of the Code of Criminal Procedure to say that all matters of criminal procedure are undertaken to be dealt with in the Code of Criminal Procedure. At the time Article 5517, which was the Act, as stated, of the Thirtieth Legislature, was before the Legislature for consideration and at the time of its enactment, the decision of the Supreme Court in the case read from by counsel here, the case of Scott vs. The State, 86 Texas, 321, was presumably known to the members of that body. In that case the Supreme Court expressly affirmed the doctrine that nothing was a crime in Texas and no case a criminal case in Texas except such act as was defined to be a crime in the Penal Code. So that it occurs to the Chair that in construing the language of Article 5517 we ought to take those things into consideration and the probability that in the minds of the Legislature was the definition of a criminal case as made by the Supreme Court in the Scott case. If that definition was in the minds of the Legislature, the Legislature did not intend by the use of the language "in a criminal case" or "criminal proceeding" to refer to anything other than such criminal case as was made so by the Penal Code of the State or any kind of criminal proceeding not covered by the provisions of the Code of Criminal Procedure. So that, in the opinion of the Chair, the language as used in Article 5517 does not apply to impeachment cases. In that, the Chair might be in error, in that the Chair is not thoroughly satisfied with its own conclusion as stated, because there are several references in the Constitution to impeachment, in which it is classified as a criminal case. But a careful consideration of the provisions of Article 5517, compared with the provisions of the two sections of the Constitution of the United States which were involved in the decision of the Swayne case has brought the Presiding Officer to the conclusion that the evidence now proposed to be offered in behalf of the Managers for the House is not within the intention at all of Article 5517. The Swayne case is in point as far as it goes, in the opinion of the Chair. It is in point, however, not as an authority or as a rule of law to be obeyed by this Court, but as a rule of reason to be followed by this Court in so far as the Court believes it correctly states a rule of reason. If it were a decision of our own Court and directly in point it would, in the opinion of the Chair, be a rule of law, to be obeyed almost as much so as if it were a part of our statute, but it was a decision of a political party, largely—a legislative body, I will say—the highest court of impeachment in this land, it is true, but evidently was reached largely on partisan lines, and the reasoning of the minority as found in the reports of that case, appeals more strongly to this Presiding Officer than does the reasoning of the majority. However, the Chair was going on to state that, in his opinion, regardless of whether this is a criminal case or not, the testimony offered is not within the provisions of Article 5517, and the Swayne case is not on all fours strictly, because of the difference between the provisions of the Acts of Congress under which the investigation occurred in the Swayne case, the preliminary investigation, and the provisions of the Texas statute. In this connection the Chair will read into the record the two articles of the Revised Statutes of the United States upon which the House Committee pursued or prosecuted the investigation of Judge Swayne. Section 859 of the Revised Statutes of the United States reads as follows: "No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, ex-

cept in a prosecution for perjury committed in giving such testimony," but an official paper or record produced by him is not within the said privilege. And in that connection Section 103 of the Revised Statutes of the United States should be read and is applicable: "No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any committee of either House, upon the ground that his testimony to such fact, or his production of such paper may tend to disgrace him or otherwise render him infamous." Now, Section 5517 of the Revised Civil Statutes of Texas, here invoked in support of the objections to this testimony, does not in express terms apply to an investigation conducted by either House of the Legislature; it is only such investigation as might be conducted by a committee of either House. That section does not expressly provide, or provide at all, that witnesses may be compelled to testify as to facts or to produce documents that would expose them to public contempt or public disgrace. The provision relating to the authority of the Committee has been read before the Court several times, but in order that the connection may be kept before the Court the Chair will read that provision now: "Such investigating committee, and each member thereof, shall have full power and authority to administer oaths to officers, clerks and stenographers that it may employ in connection with the performance of its duties, and to any witnesses and parties called to testify before it; and said investigating committee shall have full power and authority to issue any and all process that may be necessary to compel the attendance of witnesses and the production of any books, papers and other written documents it may designate, and to compel any witness to testify in respect to any matter or charge by it being investigated, in answer to all pertinent questions propounded by it, or under its direction, and to fine or imprison any witness for his failure or refusal to obey the process served on him by such committee, or to answer any such pertinent questions propounded; provided, that such fine shall not exceed one hundred dollars, nor shall imprisonment extend beyond the date of adjournment of the Legislature then in session; and provided, further, that the testimony given by a witness before such investigating committee shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury committed before such committee."

Now, the protection or immunities contained in the second and last proviso attached to and a part of this article of the statute comes in immediate connection with the other provisions of the statute which give the investigating committee the power to compel the attendance of witnesses, and the power to compel witnesses to produce papers, and the power to compel witnesses to testify. In the opinion of the Chair, no one except those under the compulsion of this article of the statute is entitled to the protection of it or the immunities of it. I do not believe that the Legislature intended by this provision to place any one under the immunities of the statute or the protection of the statute, if you so call it, who was not at the same time subject to its compulsion. In this connection it was admitted here, as the presiding officer understands it, that the testimony proposed to be offered was given by the Respondent after he had voluntarily taken the stand—that the Managers for the House, or the Attorneys for the House of Representatives sitting as a Committee of the Whole House, requested the Respondent in the examination or the investigation before the House, to take the stand as the first witness. He claimed the right, which in the opinion of the presiding officer of that body, and in the opinion of this Presiding Officer, he had a right to claim, to refrain from taking the stand in that proceeding. Thereupon, not being subject to the compulsion of the statute, Respondent, after the House had—or the Managers of the Proponents of the charges had concluded the testimony, voluntarily went on the stand and the testimony adduced from the witness after he had voluntarily taken the stand is, as the Presiding Officer understands it, the testimony that is desired to be reproduced here. That being the view of the Presiding Officer, that it was not within the intention, it certainly was not within the spirit of the Act to allow one not subject to its

compulsion to claim its immunities, unless the Respondent is clearly within the letter of the act, the testimony should be admitted. In the opinion of the Chair, the investigation over there, in the first place—I don't know that there is anything to this, but this has occurred to the Chair—this article of the statute treats of investigating committees and their work. As stated before, there is a difference between the language of the Acts of Congress relating to these investigations and the language of Article 5517. The Congressional Acts especially include the investigations made by either body of Congress, or by any committee of either body. The language of 5517, in terms is restricted to investigations made by committees of either House. Now, then, as the Chair understands it, the investigation over at the other end of the Capitol was conducted by the whole House, sitting as a Committee, it is true, but not appointed as a Committee. The language of this statute—I am speaking now of the strict letter of the law, it being the opinion of the Chair that the privilege invoked is not within the spirit of the law, and then, unless within the strict letter of the law, why, the objection should not be sustained. Then, going back, the statute invoked provides for investigations by committees appointed by either House. The investigation in the other end of the Capitol was by a Committe of the whole House. Such Committee could not be appointed, the House simply resolved itself into a Committee of the Whole, the whole House acting. It was not, therefore, a Committee appointed; therefore, the Presiding Officer states—he is not sure he is correct on that point—that the investigation there should be differentiated from the investigation contemplated in Article 5517 of the Revised Statutes.

Another thing, the Chair has gone to the trouble to investigate, to read the resolution under which the investigation was undertaken. The investigation was not prosecuted under Article 5517, or under the provisions of Chapter 3, Title 82, of the Revised Statutes of Texas, but the investigation, in the progress of which the testimony now offered was given, was pursuant to a special resolution offered in and adopted by the House of Representatives. That special resolution, it is true, does clothe the House, sitting as a Committe of the Whole, with all the authority conferred upon special committees appointed under authority of Article 5517; but it is clear, in the opinion of this Presiding Officer, that the investigation of the Respondent herein was not prosecuted under Article 5517, but under a special resolution of the House of Representatives. So, that, taking the case as a whole, the Presiding Officer is of the opinion that the objection is not well taken, and it is, therefore, overruled.

Senator Bailey: Mr. President.

The Chair: The Senator from DeWitt.

Senator Bailey: I ask leave to withdraw my resolution.

The Chair: The Senator from DeWitt asks the unanimous consent to withdraw his resolution. Is there any objection? The Chair hears none, and the request is granted.

Senator Bailey: I desire, Mr. President, that the Journal not be encumbered with it, unless some Senator wants it.

A Senator: I did not understand the Senator?

Senator Bailey: That it not be entered in the Journal unless some Senator wants it.

The Chair: The request is granted. The resolution will not be entered in the Journal. The Reporters will please expunge that resolution.

General Crane: Will the Court excuse me for a moment?

Senator Page: Mr. President.

The Chair: The Senator from Bastrop.

Senator Page: Before General Crane retires, it is now about 5:00 o'clock, I presume that the counsel for the Board of Managers will desire to introduce now a number of excerpts from the testimony of the Governor given in the House, under the ruling of the Chair; and it has occurred to me we could probably save time by rising now and allowing the General to prepare all those matters, and he might have them in shape to put them in in the morning. I move, therefore, that the Court rise until tomorrow morning at 10:00 o'clock.

General Crane: Well, I am always willing to adopt a suggestion.

The Chair: The Senator from Bastrop moves that the Court rise until tomorrow morning at 10:00 o'clock. Those favoring the motion, say "Aye," those opposed, "no." The motion prevails, and the Court will rise until tomorrow morning.

The Senate, sitting as a Court of Impeachment, thereupon adjourned, to reconvene the following morning at 10 o'clock.

In the Senate.

(President Pro Tem. Dean in the chair.)

Bills and Resolutions.

(By unanimous consent.)

By Senator McNealus:

S. B. No. 16, A bill to be entitled "An Act authorizing the commissioners court of Dallas County, Texas, to provide a building in the city of Dallas at or near the court house in said county, and to establish therein a woman's rest room or rest rooms of sufficient dimensions for the comfort and convenience of the women and children from the rural districts who are called upon to attend court, or to visit the county site; and appropriate sufficient money out of the general fund of said county to properly maintain said rest room or rest rooms, and to pay the salaries of the matron and janitor, and to provide water, lights and heat for said building."

Read first time and referred to Committee on Labor.

Adjournment.

At 5:40 o'clock p. m., on motion of Senator Clark, the Senate adjourned until 9:30 o'clock tomorrow morning.

APPENDIX.

Petitions and Memorials.

Houston, Texas, Sept. 10, 1917.

Senator R. M. Johnston, Austin, Tex.

We are unanimously and bitterly opposed to the enacting of any law being created that will permit the automobile places of business of any kind, including gasoline filling stations, to operate on the Sabbath, this being directly in opposition to a citizenship of Christian people. We ask that you use your best efforts to place this business under the same ban as all other legitimate business. This with reference to the bill that is now before the Legislature. This request voices the sentiments and wishes of ninety per cent of the dealers of this community, also voices the sentiments of the best cities of Texas.

Houston Automobile Dealers Assn.,
By Geo. M. Conant.

Committee Reports.

(Floor Report.)

Austin, Texas, Sept. 11, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: We, your Committee on Agricultural Affairs, to whom was referred

H. B. No. 8, A bill to be entitled "An Act to amend Sections 1, 2 and 8 of Chapter 181, General Laws enacted at the Regular Session of the Thirty-fifth Legislature, establishing 'standard containers' and 'standard packs and grades' for fruits and vegetables and to add thereto Section 2a, and declaring an emergency,"

Have had the same under consideration and beg leave to report the same back to the Senate with the recommendation that it do pass.

Decherd, Buchanan of Scurry, Floyd, Alderdice, Buchanan of Bell.

(Floor Report.)

Senate Chamber,
Austin, Texas, Sept. 11, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: Your Committee on Finance, to whom was referred

S. B. No. 10, A bill to be entitled "An Act to amend Chapter 42 of the General and Special Laws of this State of the First Called Session of the Thirty-fifth Legislature, relating to the State Institution for the Training of Juveniles, as found on pages 92 and 93 of the Laws of the First Called Session of the Thirty-fifth Legislature,"

Have had the same under consider-

ation and beg leave to report it back to the Senate with the recommendation that it do pass and be not printed.

Hudspeth, Chairman; Caldwell, Johnson, Page, Westbrook, Clark, Parr, Johnston of Harris, Decherd, Bee, Dean.

Committee Room,
Austin, Texas, Sept. 11, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: Your Committee on Judicial Districts, to whom was referred

S. B. No. 12, A bill to be entitled "An Act to reorganize the Seventieth Judicial District of the State of Texas, and to make all process issued or served before this Act takes effect, including recognizances and bonds, returnable to the terms of the courts as herein fixed; to validate such process and to validate the summoning of grand and petit jurors and juries; repealing all laws and parts of laws in conflict herewith, and declaring an emergency,"

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass and be not printed.

BUCHANAN of Scurry, Chairman.

Engrossed Committee Report.

Committee Room,
Austin, Texas, Sept. 11, 1917.

Hon. W. L. Dean, President Pro Tem. of the Senate.

Sir: Your Committee on Engrossed Bills, have carefululy compared Senate Bill No. 8, and find same correctly engrossed.

ALDERDICE, Chairman.

Committee Room,
Austin, Texas, Sept. 9, 1917.

Hon. W. P. Hobby, President of the Senate.

Sir: Your Committee on Engrossed Bills has had Senate Bill No. 14 carefully compared, and finds the same correctly engrossed.

ALDERDICE, Chairman.

NINTH DAY.

Senate Chamber,
Austin, Texas,
Wednesday, Sept. 12, 1917.

The Senate met at 9:30 o'clock a. m., pursuant to adjournment, and was called to order by President Pro Tem. Dean.

The roll was called, a quorum being present, the following Senators answering to their names:

Alderdice.	Hopkins.
Bailey.	Hudspeth.
Bee.	Johnson of Hall.
Buchanan of Bell.	Johnston of Harris.
Buchanan of Scurry.	Lattimore.
Caldwell.	McCollum.
Clark.	McNealus.
Collins.	Page.
Dayton.	Parr.
Dean.	Robbins.
Decherd.	Smith.
Floyd.	Strickland.
Gibson.	Suiter
Hall.	Westbrook.
Henderson.	Woodward.

Absent.

Harley.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Alderdice.

Excused.

Senator McCollum for yesterday, on account of important business, on motion of Senator McNealus.

At Ease.

The Senate stood at ease for twenty minutes, by request of Senator Alderdice.

Messages from the Governor.

Here Mr. S. Raymond Brooks appeared at the bar of the Senate with several messages from the Governor.

The Chair directed the Secretary to read the messages, which were as follows:

Governor's Office.
Austin, Texas, Sept. 12, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for the consideration of your honorable body the following subject:

Enactment of a law making additional appropriations for the support of the State government for two years, beginning September 1, 1917, and ending August 31, 1919,